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ABSTRACT

Eight papers on models for minority access to the legal profession cover outstanding programs which facilitate access to and success in higher education, concentrating on recruitment, retention, and bar passage. Susan Brown's introduction presents statistics on yearly minority enrollment in legal studies through 1981 and discusses policy perspectives. Brown's discussion of the New Mexico Supreme Court's 1980 Melendez v. Burciaga hearing on New Mexico's bar examination covers issues, proposals, and revisions instituted in the examination. Brown's third paper notes relevance for the legal profession of the simulated Medical College Admissions Test, developed to identify deficiencies in knowledge and skills so these may be remedied before students enter professional school. Angel Lopez describes the history and accomplishments of the Oregon State Bar's affirmative action program since 1973. The Professional Development Program at the University of California, Berkeley, is discussed by Hector Vasquez as a model for law school retention programs. Celestino Fernandez summarizes information obtained through a questionnaire to all 171 American Bar Association-approved United States law schools. Hector Vasquez discusses the implications of several recent legal decisions for law school admissions criteria. Finally, Claire Levay and Marlene Copeland list 66 possible sources of financial aid for minority law students. (MH)

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PLURALISM IN THE LEGAL PROFESSION: MODELS FOR MINORITY ACCESS

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The Mexican American Legal Defense and Educational Fund is a nonprofit organization dedicated to securing the civil rights of Mexican Americans through legal action and legal education.

FOREWORD

In January of 1980, the Mexican American Legal Defense and Educational Fund (MALDEF) published the results of its Law School Admissions Study.[1] Conducted under the aegis of the Fund for the Improvement of Postsecondary Education (FIPSE), that study surveyed admissions policies and enrollment data in California's ABA-approved law schools. Based on formal survey data, empirical observations, literature reviews, and analyses of testing and admissions policy issues, the authors suggested alternative admissions criteria that could be used to increase minority access to the legal profession and presented cogent rationales for more comprehensive assessments of candidate traits.

With the continued support of FIPSE, MALDEF expanded its focus on minority access to the law. Our Program for Access to the Legal Profession has concentrated its efforts on identifying and describing exemplary legal programs nationwide in minority recruitment, admissions, retention and bar passage. The expanded scope of this second study is premised on the belief that higher education access for disadvantaged minorities is a complex issue requiring a systemic approach, and that alternative admissions criteria alone do not fully address the conundrum.

In candor, the intervening years between MALDEF's *Law School Admissions Study* and this book have yielded much less than one might have wished, both in terms of genuine policy reevaluations and modifications, as they relate to minority opportunities in professional education, and in terms of numerical comparisons of the status of Mexican Americans and other disadvantaged groups in the law then and now.[2] Many victories for minorities since the mid-1970s appear to have been Pyrrhic. Also, general economic and political climates do not bode well for those who are only now attempting to penetrate traditional barriers to professional schools and established professions.

Lamentations aside, however, the following chapters relate outstanding existing programs which are currently facilitating minority access to and success in higher education. Although they represent some of the best and brightest of such exemplary programs, other stellar endeavors are necessarily omitted here due to space limitations or insufficient knowledge of their accomplishments. We, therefore, invite and welcome information on any omissions; communications may be addressed to MALDEF's Program for Higher Education Access.

Finally, it should be said that this publication reiterates many of our previous policy perspectives, the most fundamental of which is that institutional commitment is the *sine qua non* of any successful minority access program in the law. It is our hope that this book will provide law schools, bar associations, committees of bar examiners, law students, and members of the general legal profession with examples of provocative and innovative achievements in minority access that will engender similar undertakings by other organizations. The prototypes set forth concentrate on recruitment, retention and bar passage. Discussions of general testing and admissions issues and proffered alternative admissions criteria are contained in our 1980 *Law School Admissions Study*.

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[1] The Mexican American Legal Defense and Educational Fund is a national advocacy organization with a demonstrated interest and expertise in educational issues. Of specific concern to MALDEF is the issue of increased access of minorities to postsecondary educational institutions. In addition to civil rights litigation, MALDEF administers educational programs for promising and deserving Hispanic law students, community education, and research and policy analysis programs.

[2] Susan E. Brown and Eduardo Marenco, Jr., *Law School Admissions Study* (San Francisco: Mexican American Legal Defense and Educational Fund, 1980).

ACKNOWLEDGEMENTS

For the Mexican American Legal Defense and Educational Fund (MALDEF), postsecondary education and educational access for Hispanics are major programmatic priorities. MALDEF's commitment to minority higher education is reflected through litigation, monitoring, and policy studies and research activities in our six nationwide offices: San Francisco (headquarters); Los Angeles; Denver; San Antonio; Chicago; and Washington, D.C.

We are deeply indebted to the Fund for the Improvement of Postsecondary Education (FIPSE) for its continued support and direction, both during this Program for Access to the Legal Profession study and our previous effort on law school admissions. We also wish to express our appreciation to the ABA-approved law schools that took the time necessary to tabulate and submit data for our questionnaire, which is reproduced in the Appendix; though detailed, much of information adduced through the questionnaire was unavailable from other sources, and hence it provides a unique contribution.

MALDEF staff members who were invaluable in producing this book include: Marlene Copeland, Claire Levay, Yolanda Jesch and Ana Guzman. The authors gratefully acknowledge the chapters contributed by Dr. Celestino Fernandez, Professor of Sociology at the University of Arizona, and Mr. Angel Lopez, former director of Oregon's Affirmative Action Program. Ms. Christine L. Miklas lent her expertise as book editor.

In particular, we wish to thank the members of the Advisory Committee to this study who made available to us their considerable talents and direction:

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CHAPTER I
INTRODUCTION

Data corroborate the meager participation of Hispanics in legal studies and in the practice of law. Minority enrollment in ABA-approved law schools reached a relative plateau in 1975 and has remained comparatively stagnant since then. All Hispanics together currently comprise a scant two percent of total law school enrollment, as the following table illustrates:

	1975-76	1976-77	1977-78
Total enrollment	116,991	117,451	118,557
Black	4.38%	4.69%	4.47%
Hispanic	1.57%	1.74%	1.76%
Asian, Pacific	0.94%	1.13%	1.16%
American Indian, Alaskan	0.25%	0.25%	0.31%

	1978-79	1979-80	1980-81
Total enrollment	121,606	122,801	125,397
Black	4.64%	4.28%	4.43%
Hispanic	1.9%	1.85%	2.02%
Asian, Pacific	1.17%	1.26%	1.34%
American Indian, Alaskan	0.32%	0.32%	0.31%[1]

Numbers of full-time minority faculty in ABA-approved law schools are even more abysmal. As of June 1980, the presence of Chicano, black, Puerto Rican, Asian and other Hispanic faculty in our nation's law schools totaled 293 out of a roster of 5,226 law school teachers, with 14 Chicano faculty members. The enumeration is as follows:

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[1] Source: American Bar Association, *A Review of Legal Education in the United States—Fall, 1982.*

MALDEF's own data, as derived from information obtained through an extensive questionnaire mailed to all 171 ABA-approved law schools, confirm that trend. As discussed, *infra*, in the chapter entitled "MALDEF's Program for Access to the Legal Profession: Questionnaire Analysis," at the present rate of increase of four percentage points every eleven years, it will take approximately 44 years before minorities in the law will approach population parity. This estimate may be rather optimistic given present enrollment stagnation coupled with decreased financial aid and political retrenchment toward minorities and the disadvantaged.

Total Teachers:	5,226
Total Male:	4,514
Total Female:	707
Total Minority:	293
Male American Indian:	13
Male Asian American:	30
Female Asian American:	2
Male Black:	131
Female Black:	40
Male Chicano:	11
Female Chicano:	3
Male Puerto Rican:	33
Female Puerto Rican:	5
Male Other Hispanic:	23
Female Other Hispanic:	2
Total New Male:	453
American Indian:	2
Asian American:	4
Black:	7
Puerto Rican:	2
Other Hispanic:	1
Total New Female:	187
Black:	12
Chicano:	2
Puerto Rican:	1 [2]

In April of 1981, MALDEF conducted an informal telephonic survey to ascertain the approximate numbers and demographic location of Chicano and other Hispanic attorneys. Such a survey was requested by MALDEF's President and General Counsel due to the paucity of formal data on practicing Hispanic attorneys.[3] The 1981 survey yielded these results:

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[2] Source: *Association of American Law Schools Newsletter*, June 1980.

[3] The President and General Counsel at that time was Vilma S. Martinez; MALDEF presently operates under the able leadership of Joaquin G. Avila.

Chicanos and/or Hispanics by State			Source
California:	c. 1000	Chicanos	Jeanne Raya, President La Raza
Michigan:	c. 60	Chicanos	John Castillo, President National Hispanic Bar Association
Texas:	c. 2000	Hispanic surnamed	Manuel Banales, Chairperson, Section of the Texas Bar on concerns for Spanish speaking
Washington, D.C:	c. 50	Chicanos	Percy Duran, referred by John Castillo
	c. 150	Hispanics	
New Mexico:	c. 300	Hispanic surnamed	State Bar Roster
Colorado:	c. 150	Chicanos	Robert Maes, President-elect, National Hispanic Bar Association
Illinois:	c. 200	Chicanos	Virginia Martinez, Regional Counsel MALDEF, Chicago
Indiana:	c. 25	Hispanic	John Diaz, referred by John Castillo
Arizona:	c. 185	Chicanos	Gloria Aguilar, Los Abogados

Although the above data do not pretend to be exact nor inclusive of all Hispanic practitioners, they do represent highly informed estimates on licensed Hispanic attorneys (slightly more than four thousand) in the states with the most numerous Hispanic population.

With respect to Hispanics within the United States federal judiciary, John Roy Castillo, 1981 President of the National Hispanic Bar Association, reported the following in a recent newspaper editorial column entitled "Point of View:"

> Since the start of the Republic, more than 2,000 judges have been appointed to the federal judiciary. Only 37 of them were Hispanic. Of those, 23 served in Puerto Rican courts. *Of the remaining 14, 11 received their appointments in the past four years. That leaves the remaining three covering 50 states and nearly two centuries.* (Emphasis original.)[4]

These figures are particularly significant when viewed within the context of recent census reports. On September 16, 1982, the U.S. Department of Commerce announced that Mexican-origin population had increased 93 percent since 1970. The overall Spanish-origin population in the United States increased from 4.5 percent to 6.4 percent during that decade, thus reaching a 1980 total of 14.6 million persons. Mexican-origin population alone escalated from 4,532,435 persons in 1970 to 8,740,439 in 1980.[5]

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4. "U.S. needs Hispano lawyers; Hispanos need to know the law," *The Denver Post*, 10 September 1981.

5. U.S. Department of Commerce News, Bureau of Census, "Census Figures Show Expanding, More Mobile Hispanic Population," 16 September 1982, pp. 1-2. In rank order, California, Texas, Illinois and Arizona contain the largest Mexican-origin populations.

Policy Perspectives

These data are important insofar as they reflect the extent to which our society has failed to achieve a pluralism in higher education that confers benefits and burdens equitably. As the Carnegie Council on Policy Studies in Higher Education found in its "Giving Youth a Better Chance: Options for Education, Work and Service,":

> As the already advantaged advance, the less advantaged tend to fall farther behind; and social cleavage widens and social unrest accelerates. We are in danger of developing a permanent underclass, a self-perpetuating culture of poverty, a substantial and continuing "lumpen-proletariat" in the ' home of opportunity" where every man is the equal of every other man. We are in danger of creating a set of policies that provides a substantially free ride financially for many of the successful and permits, if it does not insure, a bum's rush for the unsuccessful in the race for life chances.[6]

With respect to minorities in higher education, the disparities in educational opportunity and attainment will be particularly punitive both in terms of wasted human potential and societal ramifications if the present trend in postsecondary education is not reversed. The same Carnegie Council also documented that:

> The number of nonwhite youths potentially subject to some form of inequality of opportunity will rise from 15.8 per cent of the population aged 16 to 21 in 1980 to 18.7 percent in 1990 and then stabilize at about that proportion. This is a rise of nearly 20 percent in the share of the age cohort. The population of young Hispanics is also growing rapidly and will form a rising percentage of the total youth population. . . . We define "most able" as the top 25 percent in academic ability, and the loss of the talent of members of this group is particularly costly to the nation.[7]

Recognizing the urgency of fomenting enhanced minority opportunities in the law, the American Bar Association enacted Accreditation Standard 212 in August of 1980. To receive and maintain ABA approval, schools are required to comply with the following mandate:

STANDARD 212

> Consistent with sound educational policy and the Standards, the law school shall demonstrate, or have carried out and maintained, by concrete action, a commitment to providing full opportunities for the study of law and entry into the profession by qualified members of groups (notably racial and ethnic minorities) which have been victims of discrimination in various forms. This commitment would typically include a special concern for determining the potential of such applicants through the admission process, special recruitment efforts,

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[6] "Excerpts from Carnegie Council's Report on Youth," *The Chronicle of Higher Education*, 3 December 1979, p. 11. See also Alexander W. Astin, *Minorities in American Higher Education* (San Francisco: Jossey-Bass Publishers, 1982).

[7] "Excerpts from the Carnegie Council's Report on Youth," p. 12.

> and a program which assists in meeting the unusual financial needs of many such students, provided that no school is obligated to apply standards for the award of financial assistance different from those applied to other students.

There are several crucial considerations to bear in mind in fulfilling the objectives and ultimate mission of ABA 212. First and foremost, schools should proceed with caution regarding standardized test scores in evaluating candidates from minority and disadvantaged backgrounds. Countless noted researchers have discussed: the cultural relativism of intelligence; existing test misuse through overreliance on LSAT scores; disparities between minority and majority individuals' test performance where students had comparable grade point averages from identical programs in the same universities; and inadvertent scientific racism predicated on a misunderstanding of the decisions that can be made with confidence based on standardized test scores.[8]

Despite these studies, cautionary policies issued by the test manufacturers, and statistical information and caveats provided by the Law School Admission Council, the LSAT sponsor, test misuse is blatant and its effect on talented minority youth is pernicious.[9] Dr. Celestino Fernandez in our questionnaire analysis chapter, *infra*, documents that law schools continue to place excessive reliance on LSAT scores in relation to GPA and other candidate traits. The LSAT, a three-hour examination, accounts for from 40 to 75 percent of the weight in a candidate's predictive index.

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8. *See, e.g.*, Astin, *Minorities in American Higher Education*; Carlos Manual Haro, *Criticisms of Traditional Postsecondary School Admissions Criteria: A Search for Alternatives*, Occasional Paper No. I (University of California, Los Angeles: Chicano Studies Center Publications, 1978); Allan Chase, *The Legacy of Malthus: The Social Costs of the New Scientific Racism* (Urbana: University of Illinois Press, 1980); Warner V. Slack and Douglas Porter, "The Scholastic Aptitude Test: A Critical Appraisal," 50 *Harvard Educational Review* 154 (1980); and Joseph Gannon, "College Grades and LSAT Scores: An Opportunity to Examine the Real Differences in Minority Nonminority Performance," David M. White, ed., *Towards a Diversified Legal Profession* (San Francisco: National Conference of Black Lawyers, Inc., 1981), p. 272. Gannon's study presents a data analysis of minority and white law applicants' undergraduate grade point averages and LSAT test scores, where the students came from the same feeder schools with similar or identical academic majors. Results indicate that Hispanics and blacks with undergraduate grade point averages comparable to those of majority-culture peers score, on average, one standard deviation lower on the LSAT. Based on students' similar past academic performance and preparation, the study raises serious questions about the validity of the test as it relates to minorities.

9. Among its policy guidelines, the Law School Admission Council has long admonished schools *inter alia* to: avoid improper use of cut-off scores, particularly with minorities; refrain from using the test without an understanding of its limitations; rely on the test only with predictive validity studies performed on the particular school; and refrain from using the LSAT score as a sole criterion for admission. See "Cautionary Policies Concerning Use of the Law School Admission Test, the Law School Data Assembly Service, and the Law School Candidate Referral Service," memorandum (Princeton, N.J.: Law School Admission Council, 1978) to Law School Deans, LSAC Council Representatives, Admissions Committees, and LSAC Board and Committee Members. The long-standing dilemma has been that neither the test manufacturer nor test sponsor has enforced sanctions against institutions engaging in test misuse.

With the development of the New LSAT, which was first administered in June of 1982, there was and still is reason to be relatively sanguine about the potential for reassessment of the entrenched evaluative standards by which students, particularly minorities, are admitted to law schools. However, preliminary observations about the use of the New LSAT do not lead to optimism. Although the score scale of the test was designed to be sufficiently distinct from the old so as to discourage attempted conversions from the new to old scales, and though no validity formulae presently exist for use of the New LSAT, it would appear that part of the rationale in developing the new examination is being defeated.[10]

First, converting the New LSAT scaled score to the familiar 200-800 scale is analogous to comparing apples with oranges. It is flatly incorrect. Second, one purpose in designing the new examination was to reduce the apocryphal significance of small score differences and, presumably, to encourage schools to assess traits apart from GPA and LSAT in selecting applicants. If such a policy modification is taking place, it is, unfortunately, not obvious at present. Nor are any major announced efforts by national legal organizations or test sponsor organizations underway to examine alternative admissions criteria, particularly as they might be relevant to minorities. Paradoxically, until new criteria are implemented and analyzed through statistical studies, there can be no corroboration of their validity, and law schools are generally reluctant to use admissions criteria that have not been validated.

Apart from test use, a second major policy consideration is that of minority student insularity in most law schools, coupled with the absence of minority law faculty, and the effect that such isolation has on students. In studies on women in skewed sex-ratio settings, it was found that female tokenism hindered women's academic achievement in law school. It produced performance pressures, as well as causing exaggeratedly high or low peer integration, while the majority of men showed medium peer integration and average performance.[11]

The Professional Development Program, a minority retention effort described *infra*, discusses the dynamics of tokenism as they affect minority performance in higher education and suggests, as the Kanter study, that low proportional group representation operates to the scholastic detriment of minorities.

A final policy consideration is that of the overall caliber of minority students who seek admission to law school today. Although, on whole, the LSAT scores of minority students may not be competitive with more advantaged majority culture applicants, minorities should not be made to feel apologetic for having achieved a position from which they can vie with more economically and educationally favored white counterparts. Indeed, the highly successful Professional Development Program set forth, *infra*, operates on the premise that minorities who have gained access to Berkeley's rigorous mathematics department should, despite SAT scores, be considered honors students.

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[10] At the annual Law School Admission Council (LSAC) meeting in Lake Delavan, Wisconsin on June 1-4, 1982, LSAC representatives introduced the new examination and suggested correct methods of interpreting the new scores. As an observer who had the opportunity of attending the meeting, I was dismayed at the insistence of admissions officers and faculty from some schools on converting the new score to the old—a blatant misuse of the New LSAT. It was further distressing that there was not more interest in and demand for research and statistical analyses of alternative admissions criteria.

[11] Rosabeth M. Kanter, "Some Effects of Proportions on Group Life: Skewed Sex Ratios and Responses to Token Women," *American Journal of Socioloy*, vol. 82 (March 1977); Eve Spangler, Marsha A. Gordon, and Ronald M. Pipkin, "Token Woman: An Empirical Test of Kanter's Hypothesis," Law Student Activity Patterns Project of the American Bar Foundation (Chicago: University of Chicago, 1978), reprinted from *The American Journal of Sociology*, vol. 84, no. 1 (July 1978), pp. 160-70.

As is widely known, mean LSAT scores for minorities today would have represented absolutely competitive scores two decades ago. As the Commission of Civil Rights reported:

> LSAT scores rose so substantially between 1961 and 1976 that a score which in the 1960's would have secured access to the Nation's most selective law schools was by 1977 the bare minimum required at a full two-thirds of all law schools. The numerical test scores of many applicants currently being rejected would easily have qualified them for study just 10 years ago. Admission to the Nation's top law schools currently requires LSAT scores of about 690.[12]

In *Melendez v. Burciaga*, a hearing on writ of mandate before the New Mexico Supreme Court regarding that state's bar examination which is discussed *infra*, Dean Fred Hart and other respected legal educators attested to the high credentials needed for entry into any ABA-approved law school today and to the quality of those graduates, minority and majority. In fact, one of the more impressive aspects of the *Melendez* hearing was the demonstrated competence and eloquence of the Chicano attorneys and petitioners.

More individualized evaluation of applicants to law school would reduce the margin of error in dismissing talented minority candidates because they do not present the highly traditional credentials of those ensconced within faculty and administrative positions in legal education. As one commentator has noted of Professor Michael Moorhead:

> He makes the observation that law schools make a mistake when they equate depersonalization with objectivity in their admissions process. "Depersonalization," he says, "makes it possible for admissions people to overlook applicants who might be qualified for legal training." Studies indicate that the profile for the average minority candidate differs from the profile for the average white candidate.[13]

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[12] *Toward Equal Educational Opportunity: Affirmative Admissions Programs at Law and Medical Schools*, The United States Commission on Civil Rights, Clearinghouse Publication 55, June 1978, p. 41-42.

[13] Ronald C. Griffin, "Admissions: A Time for Change," 20 Howard L. J. 128, 132 (1977). *See also* John Sexton, "Minority-Admissions Programs after Bakke," 49 *Harvard Educational Review* 313,326 (1979) in which he quotes Erwin Griswold, former dean of Harvard Law School in saying: "Capacity for [the analytical and research skills required of practitioners] is not built into the LSAT, although other activities of the applicants may tend to predict the existence of capacity for one or more of them. Nor does the LSAT score or college grade point average reflect the factors of judgment, professionalism, or ethics. The quantitative predictors, in my view of the range of skills needed by a practitioner, are simply not good enough to be the sole basis for admission to law school."

Concepts of merit as they relate to access to the law for minorities must be broadened. There are, by now, sufficient numbers of outstanding minority attorneys and judges that any residual doubts about their qualifications to contribute to the legal profession should be laid to rest forever. An apt view of meritocracy is expressed as follows:

> Perhaps because of the feature of temporal precedence, some critics seem to have assumed that merit claims based on past acts must possess logical or moral priority over merit claims based on future potential. The opposite is more nearly true. Merit cannot be judged apart from human interests and desires. And human interests are characteristically forward-looking, seeking satisfaction in the present and in the future. Due to the nature of human interests, the merit principle that excellences should be rewarded clearly seems to rest less on the perceived justice of rewarding particular individuals than on the social policy of promoting productive use of resources. As Professors Karst and Horowitz have stated, "It is expected that such a competitive principle will bring the most talented individuals to positions of power and responsibility, and that the competitors will produce social goods in the process of demonstrating that they merit power and responsibility".[14]

This individualized, personalized perspective of merit, particularly as it relates to minority and disadvantaged individuals, coincides incidentally, with Professor Tribe's analysis of *Bakke* and procedural fairness. Speaking of the Brennan group, he states: "[w]hether they were right or wrong, they at least did not choose to dispute directly Justice Powell's conclusion that properly individualized consideration, as an aspect of fair treatment is mandated by the fourteenth amendment. Eventually, that conclusion may be more significant than any particular view of *Bakke* itself."[15]

The remainder of this book presents concrete programs in recruitment, retention and bar passage which are operating to increase minority participation in higher education and the law; the book is designed to supplement our 1980 publication on alternative admissions criteria.[16] Our only regret in the descriptions that follow is that space does not permit additional discussions of other exemplary programs. It is hoped that the prototypes that are set forth will assist schools, state and local bars and other legal organizations in augmenting and improving their access efforts toward minorities.

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[14] Richard J. Fallon, Jr., "To Each According to His Ability, From None According to His Race: The Concept of Merit in the Law of Antidiscrimination," 60 Boston U.L. Rev. 815, 823 (1980).

[15] Laurence H. Tribe, Comment, "Perspectives on Bakke: Equal Protection, Procedural Fairness, or Structural Justice?," 92 Harv. L. Rev. 864, 869 (1979).

[16] Brown and Marenco, *Law School Admissions Study* (San Francisco: MALDEF, 1980).

In the area of bar examination passage, *Melendez v. Burciaga* relates much of the expert testimony in that hearing on the New Mexico bar examination and offers state of the art analyses on bar examination procedures. Though it was not possible to include chapters on bar examination preparation efforts, we recommend the highly successful Minority Legal Educational Resource's Summer Bar Review Program in Illinois which was described in the *Law School Admissions Study.*[17] That program raised Illinois' minority bar passage rate from 24 percent in 1977 to consistent pass rates in the sixty and seventy percentiles. Patterned on the Illinois bar review course, Hastings College of the Law instituted a similar model in 1981 that has exhibited promising preliminary results. We also commend the activities of the Association of the Bar of the City of New York, Committee on Legal Education and Admission to the Bar, for its Supplemental Bar Review Course for minority candidates.

Stellar recruitment efforts which we include are the Simulated MCAT examination and accompanying intervention materials that are being used to recruit and prepare minority pre-medical students for the rigors of the New MCAT as well as the first years of medical studies. We also present a chapter on an affirmative action project sponsored by the Oregon State Bar which, through recruitment, scholarships and liaisons with state law schools, has produced substantial increases in the numbers of minority law students and practitioners in that state.

In passing, we also mention the outstanding pre-law counseling and preparation that the Puerto Rican Legal Defense and Educational Fund in New York City offers to all minority students in that area. Their activities encompass: pre-admissions services including LSAT and writing workshops, counseling, financial aid information, and outreach; post-admissions programs offering summer internships, grants and support services; and professional development and training for law graduates and attorneys.

The Professional Development Program (PDP) located at the University of California at Berkeley is a highly successful retention prototype which, in fact, operates as an honors program for minorities in rigorous mathematics and science courses at Berkeley. PDP has assisted its participants in raising their grade point average one full grade since inception of the program, and has established a negative relationship, on whole, between math SAT scores and student performance. This model is set forth in the belief that it would function with equal distinction in the law school milieu.

Finally, we present chapters analyzing data obtained through a questionnaire that MALDEF sent to all ABA-approved law schools, a discussion of recent legal decisions as they pertain to race-conscious programs, and information on scholarships, fellowships and grants available to minorities, women and other discrete ethnic groups of law students.

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[17] Id. at 75.

For alternative admissions criteria, we suggest the models delineated in the *Law School Admissions Study.*[18] It is worthwhile noting that the Urban Legal Studies Program (ULS) located in New York City has continued with its impressive record of channelling minority students into the law through a combined B.A./J.D. degree program with New York Law School. Graduates from that program have, in general, excelled at a high level both within the undergraduate component of ULS and at law school. A related program is contemplated by San Fernando Valley College of Law in California beginning in the fall of 1983, pending accreditation of the undergraduate segment by the Western Association of Schools and Colleges. Other admissions models of note are those at the University of New Mexico School of Law, Georgetown University Law Center and Antioch Law School.

The programs we present, and others of their ilk, speak to the excellence that can be achieved in legal education while also promoting pluralism and equality within the legal profession.

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[18] Id. at 39

CHAPTER II
MELENDEZ V. BURCIAGA*

In December of 1980, the Supreme Court of New Mexico, with Justice H. Vern Payne presiding, convened *en banc* to hear *Melendez v. Burciaga*. On writ of mandate before the court, *Melendez* represented an opportunity for both the petitioners and the Board of Bar Examiners in New Mexico to present full evidence on the state of the art in bar examinations and on revisions in the licensing process that might be made to ensure optimal fairness to all bar examination candidates. Indeed, in granting the original mandamus writ on May 10, 1979, the New Mexico Supreme Court became the first in the nation to review its bar examination procedure in an open forum which permitted testimony and evidence by some of the most highly regarded experts in bar examinations and professional testing.[1] Opening remarks by the lead counsel for petitioners, Steve Herrera of Santa Fe, best encapsulate the thrust and objectives of the hearing. Mr. Herrera stated:

> We believe that by week's end, the state of the art in bar examinations will be presented for the first time in an open public hearing, in front of the New Mexico Supreme Court. As such, I know that the court recognizes the historical significance of this proceeding, not only as it relates to bar admission practices in New Mexico, but nationwide.
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> The case is not about intentional discrimination. And I think we have made that clear throughout pretrial conferences, that we do not intend to show, nor do we allege, that the Board of Bar Examiners of the State of New Mexico has intentionally discriminated against any minority group.

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*Transcript texts have been altered slightly where necessary to correct nonsubstantive errors in transcription.

[1] In granting the original mandamus proceeding, the court noted in its order that "[i]t appearing to the [c]ourt that a disparate number of Spanish-surnamed persons fail the bar examination; and it appearing to the [c]ourt that it would be proper to hold an evidentiary hearing as prayed for in the petition in the above entitled cause; . . . IT IS ORDERED that Hon. Irwin S. Moise, Albuquerque, New Mexico, be and hereby is appointed Special Master in this matter to hold an evidentary(sic) hearing and hear such evidence that may be relevant to the [c]ourt for a proper determination." Because of the illness of the Special Master, the court ultimately decided to sit *en banc* for the hearing.

Expert witnesses in the *Melendez* hearing included: Dr. Stephen P. Klein, an industrial psychologist with the Rand Corporation and consultant to the California Committee of Bar Examiners; Armando M. Menocal, III, former Chair and *ex-officio* member of the Committee of Bar Examiners in California; Dr. Ralph Hoepfner, psychometrist, industrial psychologist and consultant to the California State Bar; Dr. Richard S. Barrett, industrial psychologist and expert witness in seminal cases such as *Griggs v. Duke Power Co.*; Dean Fred Hart, former dean of the University of New Mexico Law School and long-standing member of the Test Development and Research Committee of the Law School Admission Council, sponsor of the LSAT examination; Dean Robert Desiderio, current dean of the University of New Mexico Law School; Dean Joe E. Covington, former dean of the University of Missouri School of Law and Director of Testing of the National Conference of Bar Examiners, sponsor of the Multistate Bar Examination; Professor Leo M. Romero, University of New Mexico Law School and Dean Rex Lee, dean of Brigham Young Law School.

> This proceeding will not be about the lack of good faith, to the extent that it may or may not exist by the Board of Bar Examiners. Instead, an important component of this proceeding will be the disparate effect the exam has on minorities, and second of all, the ways that we humbly suggest to the court, to improve and professionalize the bar exam in the State of New Mexico. [Transcript V1:11]

History

The evidentiary hearing regarding New Mexico's bar examination process represented the culmination of more than eight years of efforts by the New Mexico Bar Examination Litigation Committee (BELC), a coalition of minority and nonminority groups in the state, to increase the number of minority lawyers in the state bar.[2] It sought to review the entire bar examination in New Mexico to determine whether equally valid ways to measure competency to practice law existed that would not have such a disparate impact on minority candidates.

A series of events preceded the *Melendez* hearing which spurred the determination of the BELC to gain a public audience on procedures governing the bar examination. This chronicle of events included allegations in 1972 that the administration of the bar examination violated equal protection and due process rights. These allegations, as well as the request for reappraisal of the failing bar examinations, were brought by four Hispanics who had failed the examination. In a petition filed with the supreme court, the Hispanics charged that eight white applicants who had also failed the same bar examination had had their examinations reappraised and regraded by the Board of Bar Examiners and were subsequently passed. In *In re Alarid* the Hispanic petitioners alleged that the eight regraded papers had been arbitrarily chosen, that one of the petitioners had found errors in the addition of points on his bar examination paper, and that the petitioners fell in the same "borderline" failing group as the white applicants who were reevaluated and passed.[3] The then presiding New Mexico Supreme Court dismissed this petition, and the United States Supreme Court refused a writ of certiorari.[4]

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[2] New Mexico is a state rich in cultural diversity. According to the census of 1970, the population of New Mexico was 50.1% Hispanic, 50% white, 7.2% Native American, 1.9% black and 8% other. The census of 1980 reports the following population breakdown: 75.1% white, 36.6% Hispanic, 8.1% Native American, 1.8% black and 14.9% other.

[3] In re Alarid, 84 N.M. 472, 505 P.2d 67 (1972) gives only a *per curiam* memorandum opinion dismissing petitioners' request for admission, but not the text of the court's decision. The allegations presented in *Alarid* are per a telephone conversation of March 8, 1982, with Ben Chavez, Esq., one of the four petitioners.

It should be noted that the composition of the New Mexico Supreme Court that reappraised the 1972 examination is different from that of the present court.

[4] In a subsequent case, In re Pacheco, 85 N.M. 600, 514 P.2d 1297, 1301 (1973), the court upheld the validity of the bar examination as an appropriate instrument for assessing an applicant's qualifications for admission to the bar; implicit in that decision was an assumption that the examination procedure was objective, rationally related to its stated purpose, and properly administered. The *Pacheco* case had been brought originally in federal district court as Pacheco v. Compton, 58 F.R.D. 490 (1973), seeking a mandatory injunction

In October of 1974 several prospective attorneys appeared before the Supreme Court of New Mexico for their swearing-in ceremony wearing black armbands. The armbands were worn in protest against the large number of minority candidates who had failed the bar examination that year. The supreme court justices on the bench at that time refused to swear in the protesters and returned their applications to the Board of Bar Examiners for further review. As a result of public pressure and assertions by various community and civil rights groups that the court had disregarded the First Amendment right to protest silently, the protesters were sworn in at private ceremonies.[5]

Protests and demonstrations against the bar examination continued, and in December of 1974, United Press International voted the bar examination controversy the eighth most significant news story in New Mexico for the year.[6] In May of 1975, the United States House of Representatives' Committee on Education and Labor and its Subcommittee on Equal Opportunities held hearings on the bar examination controversy in New Mexico.[7] The hearings included a bill introduced in the House of Representatives by Congressman Augustus Hawkins (D., Cal.) which would have provided for a special federal bar examination committee to administer examinations to those who failed a state's examination in cases where a disproportionate percentage of minorities had failed the examination.[8]

In 1975 BELC filed a discrimination complaint with the United States Equal Employment Opportunity Commission charging that qualified applicants were being prevented from practicing their chosen profession due to the discriminatory nature of the bar examination.[9] In 1976, legislation was introduced in the New Mexico House of Representatives to study the state's bar examination; the bill would have appropriated $30,000 to the New Mexico Supreme Court to select a professional, objective and recognized out-of-state organization to conduct a study of the examination, including whether the bar exam as administered and designed

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against the New Mexico Supreme Court to establish procedures for review, including regrading of the bar examination. That action was dismissed on the grounds that plaintiffs were obligated to file a claim first with the New Mexico Supreme Court before a claim in federal court could exist. In dicta the court indicated that the failure of the New Mexico Supreme Court to set forth in its rules governing bar examinations the precise procedure to be followed in challenging bar examination results did not work a denial of due process or equal protection. *Pacheco v. Compton* at 492.

See also Lucius v. State Board of Bar Examiners, 84 N.M. 382, 503 P.2d 1160 (1972) and Rask v. Board of Bar Examiners, 75 N.M. 617, 409 P.2d 256 (1966) which previously affirmed the principle that the court, though retaining ultimate responsibility to admit or deny one the right of admission to practice law, will give serious consideration to the board's recommendations.

[5] Litigation Committee of New Mexico, *Melendez v. Burciaga*, Proposal for Funding. *See also* "Protest Disrupts Bar Rite," *The New Mexican*, 9 October 1974; "Bar Applicant Cases Referred," *The New Mexican*, 10 October 1974.

[6] Proposal for Funding, *Melendez v. Burciaga*, p. 4.

[7] Ibid.

[8] Id., p. 5.

[9] In EEOC v. Supreme Court of New Mexico, 19 F.E.P. 448 (1977).

validly measures competency to practice law. The bill passed in the House, but failed to receive final approval by both houses.[10]

Finally, in 1978 BELC filed an action in Santa Fe County State District Court against the Board of Bar Examiners and individual members of the court alleging failure of performance and improper performance of duties, as imposed by law, resulting in a discriminatory bar examination. While dismissing the suit for lack of jurisdiction, District Judge Edwin L. Felter noted the following in his opinion:

> Plaintiffs' claim of cultural bias or discrimination must have some merit. Somewhere along the line [p] laintiffs and those of identical ethnicity have been relegated to a second class citizenship. . . . A factual determination should be undertaken by a tribunal . . . after a thorough and exhaustive fact finding mission comprehensive enough in scope to uncover any obscure cause or causes contributing to an incorrect result. After the type of inquiry described, appropriate and intelligent remedial action could be taken to equalize opportunity.[11]

This opinion was a prelude to the petition filed in *Melendez*. In the description of the evidentiary hearing that follows and the information adduced, it should be noted that none of this would have come to light without the valorous decision of the present New Mexico Supreme Court to permit such a hearing.[12] New Mexico's experience should prove instructive to other jurisdictions particularly since that state's essay and Multistate Bar Examination procedures prior to *Melendez* did not differ significantly from licensing practices in nearly all other states.

Issues Presented

Compared to previous bar examination challenges, the focus in *Melendez v. Burciaga* was very much restricted to technical issues pertaining to the state of the art in bar examinations, as opposed to issues of intentional or overt discrimination. The majority of previous challenges had been couched in terms of denial of due process or equal protection under the Fourteenth Amendment of the Constitution, and with limited exceptions, such as *Richardson v. McFadden*, 563 F.2d 1130 (4th Cir. 1977) (*en banc*), *cert. denied.*, 435 U.S. 968 (1978) and *In re Peterson*, 459 P.2d 703 (1968), these Fourteenth Amendment attacks were unsuccessful.

Courts have been unwilling to hold, under an equal protection analysis, that a disproportionate minority failure rate on the bar examination creates a presumption of unconstitutionality which triggers a strict scrutiny analysis under the Equal Protection Clause and shifts the burden of establishing the validity of the bar examination as a measure of minimum competency to the examining body.[13] Likewise, under the Due Process Clause, courts have been inconsistent in determining whether failing bar applicants have a constitutionally protected liberty or property interest that is violated by a state's refusal to admit them to practice their chosen profession.[14] Even when this threshold question has been resolved favorably to a failed bar candidate seeking review of his or her examination, a state's restrictions on the right to practice within its jurisdiction can satisfy the Fourteenth Amendment if they have a rational connection to an applicant's fitness or capacity to practice.[15] Complaints filed before the Equal Employment Opportunity Commission or actions based on analogies to Title VII law have met with uniform defeat.

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[10] Proposal for Funding, *Melendez v. Burciaga*, p. 5.

[11] State of New Mexico, County of Santa Fe, District Court Case Number 78-2138.

[12] "Bar Exam Petition Is Filed," *Albuquerque Journal*, 5 April 1979.

[13] Prior to the Supreme Court's decision in Washington v. Davis, 426 U.S. 229 (1976), plaintiffs had sought to establish *de facto* discrimination by showing that: 1) an adversely disproportionate number of minorities failing the bar as compared to whites created a pre-

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sumption of unconstitutionality; 2) that this *prima facie* case of unconstitutional discrimination under the Equal Protection Clause triggered the strict scrutiny standard and shifted to defendant bar examiners the burden of proving that the test validly measured minimum competence to practice law and that no less discriminatory examination was available; and 3) that the defendant would have to prove through validation studies and evidence from testing experts that the challenged examination satisfied validation standards comparable to those set by the EEOC guidelines under Title VII. (42 U.S.C. § 2000e *et. seq.*) These challenges were supported by a long line of case authority in the employment context which held that disparate passing rates for minority examinees created a *prima facie* case of unconstitutional discrimination warranting heightened scrutiny. *See, e.g.*, Carter v. Gallagher, 452 F.2d 315 (8th Cir. 1970) (*en banc*), *cert. denied*, 406 U.S. 950 (1971); Douglas v. Hampton, 512 F.2d 976 (D.C. Cir. 1975).

In *Washington v. Davis, supra*, the Court held that invidious discrimination is not established by a mere showing of disproportionate impact, and that a racially discriminatory purpose must be proven to trigger strict scrutiny. Id. at 247. Tyler v. Vickery, 517 F.2d 1089 (1975), *cert. denied*, 426 U.S. 940 (1976), decided just prior to *Washington v. Davis*, and Harper v. D.C. Committee on Admissions, 375 A.2d 25 (D.C. 1977) appear to have dealt a fatal blow to bar challenges claiming *de facto* racial discrimination under the Equal Protection Clause. In *Tyler*, the court held that, regardless of the disproportionate passage rate for blacks, "the appropriate standard of review was the 'rational relationship' test." 517 F.2d at 1095.

14. Marshall v. Murphy, No. 1978-873 (4th Cir. 1979); Atwell v. Georgia, 466 F. Supp. 206 (1979). The distinction between due process challenges by failing applicants and by those who pass the written examination, yet are denied admission on moral character grounds must be noted. A long line of cases including Schware v. Board of Bar Examiners, 353 U.S. 232 (1957) and Konigsberg v. State Bar of California, 353 U.S. 252 (1957), has held that one has a property interest in practicing one's chosen profession. They have further found that due process requires that an applicant barred from admission to the bar on moral fitness causes be permitted a hearing to confront and refute evidence against him or her. The court's disparity in treatment of failing applicants seeking review of their examinations as compared with applicants rejected on moral character grounds can be rationalized as follows: (1) that rejection on moral grounds is based on information not derived from the applicant's examination, and (2) that moral character decisions are a type of irrebuttable presumption on which a state cannot rely without allowing the applicant an opportunity to confront. *See* Stanley v. Illinois, 405 U.S. 645 (1972).

15. *In re Peterson*, supra; *Richardson v. McFadden, supra*. The rational relationship test is easily satisfied, and courts have found the state's burden met under the following circumstances: 1) the use of essay questions on bar exams (Chaney v. State Bar of California, 386 F.2d 962, 964 (9th Cir. 1967), *cert. denied*. 390 U.S. 1011, *reh. denied*, 391 U.S. 929 (1968); 2) bar challenges alleging that the examination tests only legal memorandum skills, memory and cramming ability (Pettit v. Gingerich, 427 F. Supp. 282, 293 (1977)); and 3) the purpose of bar exams being to ensure minimum competence to represent and advise clients (In re Brewer, 430 P.2d 150, 152 (1967)).

Title VII has been found inapplicable to bar examination procedures since professional licensing fails to satisfy the traditional employer-employee relationship.[16]

Melendez, rather than presenting a frontal attack on the bar examination under either due process, equal protection or Title VII grounds, was an evidentiary hearing which disclosed the state of the art in bar examinations and the effect of different examination procedures in attempting to achieve optimal fairness to all candidates sitting for the bar. Despite differences in opinion among the testifying expert witnesses, there were numerous points of consensus which will be discussed before the divergencies in expert testimony.

Rationale for the bar examination

First, all experts agreed that the only articulated, and indeed permissible, rationale for the bar examination is the state's interest in protecting the public from incompetent lawyers. Hence, the bar examination, insofar as it performs this function, is justified. The fallacy in this professed rationale is that none of the expert witnesses could define minimum competency.[17] Not only in New Mexico, but in all states, then, one is left with the anomalous situation of adhering to a licensing system for the state bar which, though purporting to safeguard the public from practitioners who do not meet minimum standards of competency, cannot define the standard it uses. The obvious question is how one can adequately measure a criterion that eludes definition.

The myth of the 70 percent pass/fail line

Expert witnesses in *Melendez* further concurred that it is not possible to ascertain absolutely whether a bar examination paper, or indeed any specific essay question, is an absolute 70, 60 or 80 percent. The best that can be done is to contrast different answers and rank them comparatively with each other.[18] Any fixed number designated as the magical passing score is, first of all, an approximation of the true score, and secondly, mythical.

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[16] EEOC v. Supreme Court of New Mexico, 19 FEP 448 (1977); Woodward v. Virginia Board of Bar Examiners, 420 F. Supp. 725 (1977).

[17] *See Melendez v. Burciaga*, transcripts: Klein: (V1:54) (V1:3); Covington (V2:42-43) (V2:52-54); Barrett (V2:104); and Hoepfner (V3:87-88). Deans Desiderio and Hart from the University of New Mexico Law School did attest to their personal definitions of competence, but these definitions were based on their empirical observations of graduates of the law school rather than on a precise study.

The reliability of the bar examination has been well established; this signifies that whatever the bar measures, it does so consistently. Validity, on the other hand, means that the bar examination measures skills necessary for minimally competent performance as a practicing lawyer; in other words, that the bar measures what it is supposed to measure. Reliability is a necessary, but not sufficient, condition of validity.

[18] *See* transcripts: Covington (V2:7) (V2:23) (V2:50-51); Klein (V1:68-69); Hoepfner (V3:79-81); and Hart (V3:123).

The essay portion of the bar examination correlates highly with the MBE and law school grades

Testifying experts also agreed that the bar examination statistically correlates very highly with law school grades which are also based, for the most part, on written examinations. Further, the essay examination correlates highly with the Multistate Bar Examination (hereafter MBE).[19] In New Mexico, the correlation coefficient between the two sections of the bar was calculated to be approximately .70 to .83 over the past five years, and the correlation between law school grade point average and the MBE is .74.[20]

To the uninitiated, this high statistical correlation would seem to corroborate the very validity of the bar examination, but indeed it should suggest the contrary. When two distinct instruments correlate well, such as the bar examination and law school grades, or the two segments of the bar with each other, it merely indicates that the two gauges are measuring the same traits. Thus, whatever it is that the law schools are measuring with the examinations they administer over the three-year duration that a student is enrolled in law school, the bar also tests. The question then becomes why should it be necessary to retest something which the law schools have so thoroughly examined during one's law school career, and why is it presumed that a two- or three-day examination better indicates an aspiring attorney's competence to practice than the three years of testing he or she has already undergone. Likewise, the high correlation between the MBE and essay portions of the bar examination signifies that many of the same skills are being measured by each. Again, one can query why this redundancy is necessary and if resources would not be better spent measuring diverse traits.

The bar examination tests only certain lawyer competencies

Finally, the experts acknowledged that the bar examination, at best, purports to test only limited lawyer competencies, such as knowledge of the law, rapid analysis, reasoning and writing skills.[21] It does not pretend to address or measure such essential attorney qualities as adeptness in negotiation, articulateness, interpersonal skills with clients, trial advocacy, in-depth analysis or time management, to cite a few examples. Indeed, no one has ever performed a validity study to determine if the bar examination is related to what lawyers actually do in practice and to the sorts of skills needed to practice law competently.[22]

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[19] *See* transcripts: Covington (V2:34); Menocal (V3:66); Hoepfner (V3:97-98); and Hart (V3:112-13).

[20] Id., V3:112 and V2:172. The correlation coefficient is a measure of the relationship between the variables. Coefficients are always expressed as proportions between − 1 and + 1, with − 1 reflecting a negative relationship, 0 no relationship, and + 1 a perfect relationship. In response to a question about the validity of the bar examination if the correlation coefficient between law school grade point average and LSAT is .74, Dr. Barrett replied: "[A]ll that would do is confirm my earlier belief that the easiest thing to do in testing is to correlate the scores on two tests. That's no problem. It's easy to say we give a test at one time, and a similar test to the same people and there will be a correlation. What counts, and I think the only thing that counts, is this unknown correlation between the test scores and work performance." At V2:172-73.

[21] *See* transcripts: Klein (V1:41); Covington (V2:38-4); and Hoepfner (V3:88-91).

Recommendations

Apart from the points of accord among the expert witnesses, there were significant areas in which they differed in the recommended changes they suggested to the Board of Bar Examiners and Supreme Court of New Mexico to improve the bar licensing procedure methodologically within the state. Because of the preeminence of the witnesses and the importance of their considered opinions in formulating optimal procedures for bar examination testing and attorney licensing, their testimony from the *Melendez* hearing will be presented in synthesis. The remainder of this chapter will then outline the recommendations that the petitioners made to the supreme court following the hearing, and the subsequent revisions in the Rules Governing Bar Examiners, Bar Examinations and Admission to the Bar instituted by the Supreme Court of New Mexico, effective June 1, 1981.[23]

Dr. Stephen P. Klein[24]

As a consultant to the Committee of Bar Examiners in California as well as to the National Conference of Bar Examiners and other states, Dr. Klein has conducted numerous statistical studies of bar examinations.[25] Although not all experts agreed with Dr. Klein's conclusions in the different studies he has performed, he is an acknowledged expert in the statistical procedures governing bar examination administration and his suggestions for examination improvement merit serious attention. In his testimony in *Melendez*, Dr. Klein made some of the following recommendations for modification of the New Mexico bar examination process.[26]

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[22] *See* transcripts: Menocal (V3:11).

[23] *Rules Governing Bar Examiners, Bar Examinations and Admission to the Bar*, Judicial Pamphlet 14, 1981 Replacement Pamphlet, New Mexico Supreme Court, June 1, 1981.

[24] *See* footnote 1, *supra*, for a summary of Dr. Klein's credentials.

[25] *See, e.g.*, Klein, "Statistical Survey of the Performance on the California Bar Examination of Minority Graduates of California Law Schools for the years 1970, 1971, 1972, and 1973," Commission to Study the Bar Examination Process, December 1973; Klein, "An Analysis of the Relationship Between Bar Examination Scores and an Applicant's Law School Admissions Test Scores, Grade, Sex, and Racial/Ethnic Group," paper presented to the National Conference of Bar Examiners, Dallas, Texas, August 1979; and Klein, "Testing Research Skills on the California Bar Examination," a report submitted to the Committee of Bar Examiners of the State Bar of California and the National Conference of Bar Examiners, 31 December 1981.

[26] At V1:66 of the *Melendez* transcript, Dr. Klein issued the following caveat about his recommendations: "And it should be understood, that I'm making these recommendations in the context of the New Mexico bar examination. I might make somewhat different recommendations for a state like New York, where you have 4,300 people taking a July bar examination."

Improvement in scoring guide

He first recommended that more attention be focused on the scoring guide used to grade essay questions on the bar examination, stating:

> With respect to the essay test, I feel more work is needed before the examination is given, on the development of a scoring guide. This would be a guide to graders, as to what to look for in a particular question.
>
> It's been my experience that working in this area has generally improved the question which is ultimately asked; if more attention is paid to how that question is going to be graded before its actually given.
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> I would suggest that the scoring guide be revised, after a sample of answers have been reviewed, and amended as necessary, as the grading proceeds.[27]

Improvement in the scoring guide, in Dr. Klein's opinion, includes use of Board of Bar Examiners members as monitors overseeing four essay questions each. Each board member would then be responsible for uniformity of standards in his or her four questions. To further systematize and guarantee uniformity among graders, Dr. Klein recommended that prior to beginning actual grading a random sample of 10 to 15 percent of the answers for each question be taken. The grader assigned to grade the question and the monitor would both evaluate the same sample answers independently; they would then reach a consensus as to the score that should be assigned each essay answer. In Dr. Klein's words:

> We cannot have people agree to disagree in this case. . . . It wouldn't be fair to the applicant.
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> The applicant can't have somebody saying the paper is worth a high score, and the other person saying it's worth a low score. For the purposes of calibration, the monitor and the reader must agree on the score that should be assigned. Then have that 10 or 15 percent of papers thrown back into the pot and scored wherever they appear in the sequence. They're used purely for calibration purposes. It's sort of like taking the criteria that were in the scoring guide and operationalizing the criteria in terms of particular applicants' responses to the question.[28]

Five-point grading scale

The second recommendation Dr. Klein offered regarded the ubiquitous 100-point scale used by most jurisdictions in scoring essay examinations on the bar. He recommended that it be abolished, and that a five-point scale be instituted in its stead. Such a scale, which would rank papers in benchmark terms of worst, next-to-worst, average, average-to-best, and best, with a zero category for nonresponsive answers, would also obviate the mythical notion, discussed *supra*, that it is possible to judge absolutely the quality of a paper. Instead the grader would be able to measure each essay against a relative scoring criterion.[29]

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[27] See transcripts: Klein (V1:66-67).

[28] Id. at 67-68.

Weighing all questions equally

Dr. Klein's next recommendation was to weigh all essay questions equally. In New Mexico's case, with 24 essay questions, two distinct steps were involved in this recommendation. First, Klein suggested that New Mexico cease the practice of dropping a candidate's lowest essay score. Although such a practice would appear favorable to candidates, it is not justifiable statistically because of the skewing that then occurs in score distributions. The second suggestion was to equalize weight among essay questions. Even though New Mexico was grading each essay on a l-to-100 scale and then averaging the total scores, Klein testified that it was necessary to convert each essay to a common score. Klein explained that it was the spread of scores on each essay question, or the standard deviation, which determined the weight each question would have in comparison with others, with some questions potentially carrying four times as much weight as others. He elaborated:

> This is what happens on the current bar examination. . . . you will see scores where some readers will spread the grades out tremendously over the 100-point possible spread. Others will use a very narrow ranking. And as a result, when you add all of the scores together, some questions carry far more weight in determining the final standing than do others. That is inconsistent with board policy, that each question should be equal.[30]

Scaling essay to MBE

Next, Dr. Klein recommended that the essay scores on the bar examination be scaled to the Multistate Bar portion. Scaling refers to the process whereby the lesser or greater difficulty between different forms of the same examination is controlled for statistically. Klein testified:

> What I have in mind stems from a problem, which is inherent in essay portions of bar examinations, not just in New Mexico, but nationwide. And that is when a question is constructed and then scored, you don't know whether that question is more or less difficult than questions asked on previous examinations. There's no control for question difficulty or the leniency of the readers.

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[29] Id. at 68-70. It should be noted that the abolition of the mythical 100-point scale does nothing to resolve the problem of where the passing line for bar examinations should be set. As Dr. Klein testified at a later point in the hearing, " [I] t's like when God gave Moses the Ten Commandments, there was something that wasn't written down at that time. And by family tradition, this information has been passed onto me, that what God said was: If you get all ten of these, you're the Messiah. If you do nine of them, you're extraordinary. You're a saint. If you do, eight, you will be a pillar of the community. Seven, you pass. And that's where 70 percent has come from. . . .70 is a myth." At V1:195.

[30] *See* transcripts: Klein (V1:70-73). Klein made two suggestions to equalize the weight of essay questions: the first was to use the five-point scale discussed above, and the alternative was to convert all essay questions statistically to standard scores.

> We know that a so-called 70 in one law school is different from a 70 in another law school. We know that that's true in terms of bar examinations around the country. We know it's also true that questions asked one year may be generally more or less difficult than those asked in another year.
>
> So, the problem stems from the fact that in the essay examination, there is no control for test difficulty, both the questions and the readers, no control for test difficulty from exam to exam. That's true for essay examinations throughout the United States.
>
> It's not true for the multiple choice section of the examination. There is a procedure, with the multiple choice portion of the examination, that does control for differences in test difficulty, even though some of the questions are different. . . .[31]

Klein continued to explain in statistical methodology how linkage items between different versions of the same examination are used to adjust raw test scores to scaled scores that ensure the same level of difficulty between examination forms.

To scale the essay to the MBE entails making the highest essay score on a given bar examination equivalent to the highest MBE score on the same examination, and the lowest essay score equivalent to the lowest MBE score, and so forth. Then, the statistical distribution of essay scores is equated with the distribution of MBE scores, and for any given essay score, there is an MBE equivalent. This procedure assures a fixed, objective standard from bar examination to bar examination which can be published in advance. It insulates against the situation of more difficult bar examination questions or more stringent grading standards from one examination to another diminishing a given candidate's opportunity of passing the bar.[32]

Use of same pass/fail line with each examination

Scaling of the essay to the more statistically reliable MBE led into Dr. Klein's next bar examination revision recommendation. He urged that a pass/fail line be set which would be consistent across bar examination administrations. With the scaling of the essay to the MBE, indeed, it is then possible to fix a passing line that remains constant. Dr. Klein recommended:

> You set the score that's required for passing, and that score is used from that point on. Not that it shouldn't be reviewed after four or five years, or some period of time has elapsed, and you've had experience with it. But it shouldn't be something which would fluctuate from exam to exam.

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[31] Id. at 100.

[32] Id. at 102-4. Dean Joe E. Covington, Director of Testing of the National Conference of Bar Examiners, sponsor of the MBE, also recommended in his testimony that the essay portion of the examination be scaled to the MBE and that a fixed passage line be established, which would be uniform from year to year. In his words, "70 doesn't mean the same from year to year on the essay. . . . 135 means the same." At V2:29.

> At the present time, it does fluctuate. It fluctuates markedly. It's much easier to pass in February than it is in July, and maybe I'm telling stories out of school, but even though there's a lower percent passing in February than in July, the test is easier to pass in February. The standard is lower. . . .[33]

Concentration of efforts in pass/fail zone

Klein's next suggestion was that resources be concentrated on candidates around the fixed pass/fail line. He testified that in California up to 75 percent of all candidates sometimes fall in the doubtful area around the pass/fail line, after the clear passes and clear fails are identified.[34] He advised that monitors different from the original graders review these borderline papers, papers falling both slightly above and slightly below the fixed passing line:

> After you have gotten the initial score on all the applicants and rank ordered them in terms of their total score, essay and MBE combined, I would identify what I might call a grey zone around the pass/fail line, both above and below. . . .
>
> Individuals who, in terms of their total combined score—essay plus MBE—fall close to the pass/fail line, pull their essay books out and have them reread independently by the monitor. Somebody who didn't read their books the first time, but somebody who has gone through the whole calibration process to grade those books, and use the average of the two grades assigned, rather than just one or the other or something like that.
>
> The reason for my suggesting this is that this is where you want to concentrate your resources, at the pass/fail line . . . It's only those people who are near the pass/fail line, whose status is likely to be changed by a reread process. . . .[35]

As Dr. Klein points out, the two major advantages of an independent review of borderline candidates are that applicants know that if they are close to passing their papers receive an independent review, and secondly, that if there are any errors in the system these will be rectified through the review process.[36]

Publication of benchmark answers

Another recommendation, which relates to the five-point scoring scale already described, is publication of essay questions and anonymous benchmark answers by the Board of Bar Examiners after each examination. In Klein's opinion, the purpose of disseminating bar examination questions and benchmark answers would be "to provide guidance to the applicants who prepare to take another examination," as well as to illustrate vividly to new applicants, by virtue of examinations representing different points in quality along the spectrum, what the graders mean by their scoring scale.[37] Klein further suggested that the essay questions, scoring guide, and sample answers that fall within the different categories on the guide be published periodically.

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[33] Id. at V1:113.

[34] Id. at 189-90.

[35] Id. at 114-15.

[36] Id. at 115.

Investigation of skills measured

Dr. Klein's final major recommendation was that the Board of Bar Examiners develop what he termed a "content-process matrix" to analyze the types of questions that have been asked in the past and the skills those questions measure. He further suggested that the board undertake a process of investigation of additional skills that might be evaluated in the context of a bar examination, particularly as those skills are related to what attorneys actually do.[38]

Dean Joe E. Covington[39]

The next expert witness to testify in *Melendez* was Dean Joe E. Covington of the National Conference of Bar Examiners, sponsor organization of the Multistate Bar Examination. After discussing the history and development of the MBE, Dean Covington corroborated several of Dr. Klein's recommendations. He suggested that passing be based on the standardized MBE score rather than on the essay since it is more reliable.[40] He declined to define minimum competency, deferring instead to individual jurisdictions and historical precedents.[41] Finally, he commented that the MBE was designed to test essentially the same skills as those measured by the essay portion of the examination and that the skills tested by the two were a "good deal the same."[42]

Dr. Richard S. Barrett[43]

Dr. Barrett's testimony focused in great part on the bar examination in terms of its ultimate purpose and its effect on society as measured by a cost/benefit analysis. He began:

> I think the first thing that needs to be done, in developing any test, is to ask what I consider to be the fundamental question, and that's what is the user of the test trying to accomplish with the test. And in this case, for example, I think it would be essential to have a very serious look at why there is a bar examination in the first place.

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37. Id. at 116.

38. Id. at 122.

39. *See* footnote 1, *supra*, for a summary of Dean Covington's credentials.

40. *See* transcripts: Covington (V2:29).

41. Id. at 42-43, 52-54.

42. Id. at 50.

43. *See* footnote 1, *supra*, for a summary of Dr. Barrett's credentials.

> I think history is pretty well known, that the bar examination was originally used to keep people from practicing law who had not had any real training. They'd simply clerked in somebody's offices a year or two and went out to practice law, and did a disservice to their clients, because they didn't know the law.
>
> I think we ought to look at this process in 1980, where essentially everybody, certainly in New Mexico, graduating from the New Mexico Law School, has had three years of intensive instruction in the law. Now, the question is, what purpose does the bar examination serve?
>
> And I thought about this a lot, and if I'm wrong, Im sure people in discussion will correct my impressions. My impression is that the basic purpose of the bar examination is to protect the more naive members of the community from people who purport to practice law, but really don't have the adequate background of knowledge and training to do so.
>
> Then, I looked at this in some more detail, and the analysis seems to me to show this does not help the University of New Mexico Law School, because they know how to pick their faculty without any bar examination. Doesn't help the American Telephone and Telegraph, Merrill, Lynch, Pierce, Fenner & Smith, or David, Polk & Wardwell to select their attorneys, because they know how to do it anyway.
>
> It doesn't really help someone like me; when I need someone to draw up a will, I go to my friends in the legal community and financial community, and get someone who does nothing but write wills. I don't need the protection of a bar examination and who does? It's really the people who are less well educated, who are not in the socio-economic mainstream, where they would have access to references about attorneys, and it struck me that this is very much the same population that Dean Lee said would be best served by some of the minority candidates that they have encouraged to come into the law school, and whom they would like to see practice law.[44]

Describing the cost/benefit analysis as one of the most sophisticated concepts in testing, Barrett discussed the present bar examination procedure in terms of its ability to screen out correctly those persons incompetent to practice law and identify correctly those who are competent. He identified four groups of people with respect to the bar examination: those who are qualified to practice and do pass the bar; those who are unqualified to practice and fail the bar examination; those who are qualified yet fail the bar; and those who are unqualified yet pass the examination. Obviously, the first two categories represent desired outcomes, and society benefits from the licensing of qualified attorneys and the barring from practice of the unqualified; but the latter two categories, under a cost/benefit analysis, are detrimental to society's purposes. These latter groups Dr. Barrett denominated "false positives" and "false negatives".[45]

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[44] *See* transcripts: Barrett (V2:91-92).

[45] Id. at 94.

In a statistical study performed by Dr. Barrett for the *Melendez* hearing, Barrett presented figures on these false positives (persons who should have passed the bar but did not) and false negatives (persons who should have been screened out by the bar examination, but were erroneously admitted). Hypothesizing, based on his expertise in testing, that the bar examination has a validity coefficient of .30, Barrett made the following calculations.[46] In a state with a bar examination failure rate of 16 percent, the following would occur: 73 percent of the people sitting for the bar examination would be correctly identified as competent; 5 percent would be correctly identified as incompetent; 11 percent though unqualified, would pass; and 11 percent though qualified would fail. If, however, the pass rate were lowered to reflect a 31 percent failure rate, the following happens: 61 percent of the bar candidates would be correctly identified as competent; 8 percent of those who take the test will be accurately identified as incompetent; 8 percent will pass the examination though they are incompetent; and 23 percent of the qualified will fail the examination though they are competent to practice law.[47]

The net effect of a 31 percent failure rate as contrasted with a 16 percent failure rate is as follows: correct failures would be increased from 5 to 8 percent, but 23 percent who are qualified would fail as compared with 11 percent with a 16 percent failure rate. In summary, the lower passage rate of 31 percent has the largest effect on the qualified who fail, doubling the figure, while the unqualified who are weeded out by the bar remain constant. In Dr. Barrett's words, "whatever cost there is to failing qualified people goes up very fast. Whatever benefit there is from failing unqualified people is accrued only fairly slowly."[48] Graphically, Dr. Barrett's

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46. Another expert witness contested Dr. Barrett's assumption that the bar examination has a validity coefficient of .30. Indeed, it may be higher or lower. The point to be noted is that there exist no actual data on the validity coefficient of the bar since a validity study has yet to be performed.

47. See transcripts: Barrett (V2: 135-38).

48. Id. at 141-42. A complete discussion of Dr. Barrett's thesis is contained in his prepared testimony, "The Bar Examination - A Psychometric Anachronism," December 1, 1980. In this paper Dr. Barrett discusses the validity of the bar exam, noting that, in order for an exam of this type to be effective and appropriately used, the exam must display both job relatedness and content validity. According to the *Uniform Guidelines on Employee Selection Procedures* (1978), an exam used to determine entrance to a profession which has a fixed passing score must necessarily demonstrate that the passing score is appropriate to the expected level of competence of the practitioners. In order to determine competency in the legal profession, a comprehensive description of what lawyers do is necessary. Thus far, no such description has ever been prepared. Also, a distinction must be made between what is helpful to know and what one needs to know in order to be competent. Barrett notes that, from a psychometric point of view, the expected level of practitioner competence is the only correct basis for setting the passing score on the bar exam. Thus, an exam which fails a fixed percentage of test takers is suspect because the actual level of competence of the candidates changes from year to year. For the above mentioned reasons, many experts claim that the validity of the bar exam is zero or close to it, and Barrett feels that no one would maintain that the validity coefficient is higher than .30. One further reason for the low validity rating of the bar exam is the unreliability of the essay portion. Barrett notes that essay examinations are "notoriously unreliable" because graders are inconsistent. "[E]qually skilled graders scoring the same essay tests give different grades." Thus, "[w]hatever the validity of the concept of the essay examination may be, it is badly diluted by the inconsistencies in grading."

argument is illustrated by the following table where the correct passes, correct failures, incorrect passes and incorrect failures are given for hypothetical bar examinations with validity coefficients of .00 and .30 and failure rates of 7 percent, 16 percent and 31 percent.

Since in New Mexico almost 98 percent of the graduates of the University of New Mexico ultimately pass the bar examination, Dr. Barrett proposes that the examination be professionally validated to obviate the high costs to both society and the individual involved when a qualified bar candidate fails to pass the examination the first time.[49] In determining what the bar examination accomplishes in

Table 1

Results of tests of varying validity and varying pass rates, assuming that 16% of candidates are unqualified.

Correlation between test score and true qualifications

Failure Rate		r = .00		r = .30		Total %
		Fail	Pass	Fail	Pass	
7%	% Qualified	06	78	04	80	84
	% Not qualified	01	15	03	14	16
	% Total	07	93	07	93	100
16%	% Qualified	13	71	11	73	84
	% Not qualified	03	13	05	11	16
	% Total	16	84	16	84	100
31%	% Qualified	26	58	23	61	84
	% Not qualified	05	11	08	08	16
	% Total	31	69	31	69	100

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49. *See* transcripts: Barrett (V2: 138-39, 144). Indeed, one eminent witness testified that, in his opinion, nothing was achieved by forcing candidates to retake the bar examination when eventually 98 percent would pass. *See* transcripts: Menocal (V3:42-43).

comparison with what it purports to measure, Dr. Barrett recommends the following validation procedure which involves (1) defining objectives; (2) analyzing jobs; (3) determining what is qualified versus unqualified:

> I would like to get whichever group or both groups [the Board of Bar Examiners and the Court] are concerned, to go over the objectives of the bar examination and what the likely benefits of the examination are, rather in a detailed and a systematic fashion, and wind up with a substantial statement of objectives. And as much as possible, in quantifiable terms.
>
> The second thing I would do, would be to analyze the job. I don't know how many attorneys there are in the bar in New Mexico. I would suggest that it would be useful to analyze some of the jobs by direct interview with people on the job. And the simplest and best way to draw that sample would be to take a random sample of those who are members of the bar, and to see if we can talk them into giving some time to this analysis. . . . I would say I would start with 100. . . .
>
> The next part of it, . . . would be an attempt to find out really what we mean by qualified and unqualified. And I would use the technique developed during World War II, called the 'critical incident technique,' in which supervisors are asked to write down those especially good, or especially bad, bits of behavior observed in subordinates, . . . so you get a picture of what they really mean by good and by bad performance. And I would expect we would, perhaps through a questionnaire or some more widely disseminated way of getting information, collect as many instances as we could, and use that as a basis for what we really mean by qualified and unqualified.
>
> Then I would go to the actual examining procedure, and I'd start out with a point of view, which is an articulation of one of the ways of using tests. One way to use tests is to say: you have to pass two tests in order to be successful. If you're going to teach history and French, it's sensible to have the person take the test in history and a test in French, and the person should have to pass both of them to be qualified.
>
> I think in this situation, we have the other model, or another model, which is that if a person demonstrates competence, . . . they should be able to be admitted to the bar. And we should have as many routes as possible for people to demonstrate competence, each of them under control, and each one of them bearing in mind our definition of qualified and unqualified. And I think one of these procedures would be an improved bar examination.[50]

The alternatives which Dr. Barrett recommended for admission to the State Bar of New Mexico included diploma privilege, which is admission by motion to the bar after graduation from law school, or some other way of using the information which a law school after three years of experience with a student has about his or her competence. He further urged exploration of the possibility of establishing an assessment center, as California did experimentally in 1980, to test skills that are not measured on the present bar examination; these skills could include legal writing and research, drafting of discovery documents, and presentation of opening and closing arguments.[51]

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[50] *See* transcripts: Barrett (V2:148-154).

Finally, Dr. Barrett commented on the recommendations Dr. Klein had proposed. Barrett agreed that more attention should be spent on question preparation and monitoring of graders. He advocated the development of a five-point scoring scale, publication of benchmark answers, ceasing the practice of dropping the lowest essay answer of each candidate, and permitting bar candidates to sit for the bar prior to their finishing law school.[52]

Armando M. Menocal, III.[53]

As former Chair of the Committee of Bar Examiners in California, Mr. Menocal offered very pragmatic suggestions on improvement of the bar examination process in New Mexico, many of these based on his experience in California. He first stated his belief that a basic understanding of testing principles is essential to the construction of a good testing instrument, and he advocated the use of professional assistance.[54] Menocal further confirmed other expert testimony to the effect that there has never been a true validity study performed on the bar examination, but rather that bar studies to date have dealt with reliability, rather than validity. He stated:

> The very fact is that we all made the assumption that a bar exam was related to laywer incompetency, yet no bar exam, whether the Multistate, or any state bar exam we knew, had been subjected to even the most minimal study of validation.
>
> I do know Steve (Dr. Klein) has done one study for California, that looked at the correlation between law school performance, LSAT and bar exam performance. And I think the correlation came out very close to .7, and he has reported to me, and sent me tables from previous ETS studies, that were part of a larger study. I can't be certain if it's LSAT or some other test, but it was another test comparison to MBE scores. And that correlation, as I recall, was about .6 . . . those have never been characterized as any sort of validation coefficient, because I don't think they would be. I mean all they are is correlating law school training to bar exam results, as opposed to correlating bar exam results to something like lawyer incompetency. . . .[55]

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[51] Id. at 154.

[52] Id. at 162-68.

[53] *See* footnote 1, *supra*, for a summary of Mr. Menocal's credentials.

[54] *See* transcripts: Menocal (V3:7-9).

[55] Id. at 11.

Essay grading system and borderline reappraisals

Mr. Menocal then directed his testimony to the changes that had been instituted in the California bar examination process since he was Chair of the Committee of Bar Examiners. He discussed changes that California had implemented in its essay grading system, with an accompanying concentration of efforts on candidates who fall in the pass/fail zone. Menocal stated:

> [A] s I said, that's what we care about, people that are in that zone of pass/fail. And if someone is passing by a lot of points, it's better to identify that applicant, and in effect, get that applicant out of the system, so that we don't waste time scoring that applicant's papers, once we determine that person has passed.
>
> Now, the same logic would also apply at the other end of the spectrum, but in fact, we fully grade all applicants who are below the pass line, just as a matter of policy, in fairness to applicants. . . . essentially, what we do, is using the Multistate Bar Exam score, which we get early, and a portion of the essay scores, normally three out of the total nine, identify those people for whom there is an exceedingly high probability of passing.
>
> We translated that in terms of numerical score to being 99.5 percent probability of passing, and those people, the rest of their papers aren't read. Everybody else has all their papers read, and those people who are over a certain level pass. Those below that, within a certain zone, approximately 72 to 68, have their papers reread a second time by the same reader.
>
> Readers don't know whether they're reading the paper that someone read for the first time or second time. And then, we get a double reading, in effect, of those applicants' papers, which I think helps take away any sort of idiosyncrasies or difficulty in the grading process, the difference in how two readers would look at the same answer.
>
> Then, the person gets a final score, based upon the average of those two scores. People still within that range of having just failed, about 68, go out to reappraisers; one person then reads all the person's answers, and make a final pass/fail decision.[56]

Readers' conference

Menocal described the California Readers' Conference in terms of how the conference is used to prepare both the essay questions and the readers who are to grade them. Menocal explained:

> We've also made a lot of changes that deal with how our readers are prepared to grade the examination. Basically, we have a readers' conference after every administration of the exam, where members of the Committee, readers, reappraisers, law school deans, all get together and go over each question, and answers. And as part of that, we even grade answers right there, all of us in the room, blind, be-

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[56] Id. at 16-17.

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> cause weve never seen these before, and compare the answers. And through that process, over about a one-hour period for each question, sometimes, I guess it's an hour and a half, attempt to get a very clear agreement among all of us, as to how a particular question should be graded. How to handle the problems that appear in the answers that we were getting.
>
> And then after that, the readers meet periodically to make certain that they are adhering to those standards, and we also feed back into the system some of the same answers that they have previously graded, to make sure that they stay consistent over the course of the exam grading period.
>
> And then we give them papers that other colleagues have graded, the readers again, to make sure they are staying close to the same standard. We also now allow applicants to pass the MBE and essay at different sittings, so that in effect, we allow them to bifurcate those two portions of the exam, the Multistate and the essay exam.[57]

Essay question preparation

Menocal next testified how California compiled a matrix, an outline of all the areas within each subject matter which the Committee of Bar Examiners determined appropriate for examination on the essay portion of the test. He described how the Committee kept a log that showed what had been tested most recently in each subject area. He further explained how questions were solicited by the committee from law professors around the country and from law professors in California on the subject areas that dealt exclusively with California law. After the essay questions drafted by law professors are received by the committee, Mr. Menocal detailed the role of the Director of Examinations in culling down the submitted questions to the best ones. Then the same persons who function as reappraisers on the borderline questions review and edit the question drafts. Only then do the questions go to the committee as a whole. After the committee selects particular questions submitted to it by the reappraisers, the reappraisers again edit and refine the questions. The committee, then, ultimately approves the final form of each essay question.[58] Menocal continued:

> [A] nd the last step before the exam is to select those which we think are the best questions. So, since now we only test nine essay questions per exam, and there are 13 subject matters, we obviously can't test all subject matters on all exams. And so we try to pick the best question, as a question, as opposed to trying to say, okay, we have to have a community property question on each exam, and the like. We've learned over the years, in some areas there are better areas for testing, and there are some that don't tend to provide that sort of differentiation between applicants, which is what youre trying to get.[59]

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[57] Id. at 17-18.

[58] Id. at 18-19.

[59] Id. at 19-20. Mr. Menocal stated that California tested 13 primary subjects because of the existence of unaccredited law schools within the state. He said, " [I] n my own opinion

Menocal concluded his discussion of the essay question preparation in California by observing, "I don't think if you really looked at the question of what lawyers do, that there's a high correlation in many states between actual practice and subject matters on the bar exam."[60]

Dissemination of sample answers

Another practice that the Committee of Bar Examiners in California has adopted is that of releasing sample answers, not models, on the date that the bar examination results are published. The Director of Examinations selects sample answers from bar examination papers in the 70 to 85 percent range. The purpose is to demonstrate to other applicants what constitutes a good answer on a particular question in terms of a minimally adequate answer, not in terms of what an expert practitioner would write on a given topic.[61]

Alternatives to the written bar examination

After discussing California's experience with an assessment center as an experimental component to the bar examination, Mr. Menocal offered his recommendations on alternative assessment devices to the presently structured written bar examination. He advocated adding an assessment center type section to the written bar where students' abilities in legal skills such as oral advocacy, library research, client counseling and negotiating, and drafting briefs and memoranda would be evaluated. He further suggested the use of the diploma privilege, particularly in small jurisdictions like New Mexico where all law schools in the state are accredited. Menocal testified:

> The bar exam, right now, as used in all jurisdictions, both the MBE and the essay, is a scholastic examination. And we cannot pretend that in two days we do a better job than law schools that have had three year opportunities and certainly have the ability to give much more thorough scholastic examinations.
>
> In California, that option is unavailable to us, because of unaccredited law schools, and correspondence schools, and law office studies. Unfortunately, in California, we continue to need an academic type of floor. In other states that have only ABA-approved law school applicants who can take the exam, I think diploma privilege should seriously be considered.

. . . we have 13 subjects . . . because of the existence in California of unaccredited law schools and correspondence courses. And they'll teach 13 subjects if we have 13 on the bar exam. They'll teach six subjects, if we have six subjects on the bar exam." Menocal offered his own view that an applicant's academic ability could be sufficiently tested with only three essay subjects.

[60] Id. at 21.

[61] Id. at 26-27. At page 30 Menocal reiterated: "We don't want experts in particular areas grading the exam. The purpose of the exam is to test minimum legal knowledge, and minimum analytical skills, to be a lawyer. And we don't want someone who is a trust and estates expert deciding what is an adequate trust and estates answer, from the point of view of what he or she would think an expert in the field should know."

> You're really not doing very much more than law schools are. It's been my experience that the primary opponent of diploma privileges are the law schools. Law schools don't want that responsibility. They do not want to be the gatekeepers of the profession. And I think they realize that in time, whenever there is public dissatisfaction with the profession, that there will be cries for supervision and questioning of law schools as to how well they're doing that job. And in California, for example, I'd rather be supervising and looking at the adequacy of educational programs of 50 or 60 law schools, than I would 313,000 applicants.
>
> But that's another one of our functions, accrediting law schools. And it's a lot easier to do that, and to supervise the adequacy of that program, than it is to believe that we are capable of adequately assessing even scholastic ability accurately, in a two-day examination.
>
> In your state, I don't know what your final pass rates are, but I'd speculate, based on what I've seen, in either state, that if you look down the line, after three administrations of your exam to each class that takes it, your pass rate, your ultimate pass rate is over 90 percent.
>
> My question is, what have you accomplished in that? You've got this huge apparatus, which is very difficult to screen people through, and you're only screening out a small number. You're putting everyone through that same apparatus. And I don't think you can say that having done that, that the person who passes on the third administration, as opposed to the first, is any more competent a laywer and that you've done any better job of protecting the public, and that ultimately is the only justification for a bar examination.
>
> So, I think in those sorts of circumstances where you have applicants who are only coming from law schools that are supervised, secondly are capable of being reviewed in terms of their accreditation standard and where the ultimate result of taking the exam is that all you're doing is delaying the practice, people's opportunity for practice, and not even increasing very much the protection of the public from incompetent practitioners. It's hard to defend having an examination such as we all give.[62]

Right to sit for bar before graduating

Mr. Menocal's penultimate recommendation to the court was that candidates for admission to the bar be allowed to sit for the examination before graduating from law school. If applicants were allowed to write the examination any time after completing their second year of law school, he reasoned, they would have two or three chances of passing the bar prior to graduation from law school, thereby obviating the stigma in terms of having to wait to practice if one does not pass the bar on the first attempt.[63]

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[62] Id. at 41-43.

[63] Id. at 43.

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Maintenance of data

Menocal's final recommendation was that the state of New Mexico begin a process of inquiry into their examination by beginning to maintain data about individual and group performance on the bar examination that could be statistically analyzed. The California Committee of Bar Examiners maintains and evaluates this sort of performance data on blacks, whites, Asians, Native Americans and Hispanics, with occasional male/female breakdowns, while guaranteeing anonymity.[64]

Dr. Ralph Hoepfner[65]

Dr. Hoepfner, as Dr. Klein, has served as a consultant to the California Committee of Bar Examiners. His recommendations, in general, echoed some of the same concerns expressed by other expert witnesses.[66] He suggested that the more judges there are who evaluate an individual candidate's papers, the more assurance there can be that the final score approximates the candidate's true score. He agreed that a five-point scale for scoring was preferable to the illusory one to a hundred, with 70 set as passing score; he further supported borderline reappraisal of those papers close to whatever pass/fail line is established. As other expert witnesses, Dr. Hoepfner expressed concern about the scope of lawyer competencies being tested on the bar examination.[67] In particular, he was critical of the high statistical correlation between New Mexico's MBE and essay examinations. In response to a question by counsel about New Mexico's having the highest correlation in the nation, Dr. Hoepfner responded:

> Don't be proud of that. . . . What I'm saying is that a high correlation is not something you should have striven for in the first place. . . . Why do you want a high correlation? The higher the correlation, the more you're measuring the same thing, ...[68]

Finally, Hoepfner commented on the recommendations which Stephen Klein had already made to the court, *infra*. He concurred with the majority of Dr. Klein's recommendations for improving the bar examination system in New Mexico, with the exception of scaling the essay to the MBE. Hoepfner reserved judgment on that question, as had Dr. Barrett, due to what he perceived as a clear lack of information about what Educational Testing Service actually meant by its statistical scaling process.[69]

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[64] Id. at 56-60.

[65] *See* footnote I, *supra*, for a summary of Dr. Hoepfner's credentials.

[66] Dr. Hoepfner does diverge, however, from Dr. Klein in his view of potential test bias and how an examination should be determined to be unbiased. In his testimony, Hoepfner explained that, in his opinion, the methods currently used to debias exams are a fiction. At V3:73.

[67] *See* transcripts: Hoepfner (V3:81-91).

[68] Id. at 97-98.

[69] Id. at 100.

New Mexico Law School Dean and Professors

The final expert witnesses were the dean, the former dean and a law professor from the University of New Mexico School of Law, the only law school in the state. The first to testify was Dean Fred Hart, former dean of the law school and currently a law professor. While acknowledging that performance on the bar is related to performance in law school, Dean Hart expressed his opposition to diploma privilege. In his opinion, the law school should be independent of both the bar and the courts.[70] Dean Hart further testified that the essay and MBE portions of the bar test, in general, the same range of abilities, and that the essay does not add much to what is already evaluated by the MBE. He stated:

> You put any kind of test before a group of people and it seems to test the same thing, and I think you can look at that, college grades correlate reasonably well with the MBE and with the essay and they correlate with the LSAT. I think at the present state, we have a range of abilities and it's hard to even describe what those are. We don't really know what they are, but we have tests all of which test the same range of abilities. I don't know whether the California experiments are going to help, whether the assessment center is going to make that much difference. To me it seems like it is making a difference if 38 people, which is what I understand, passed the examination who wouldn't have passed it . . . so you're talking about 38 in the context of 250, which is over 10 percent, considerably over 10 percent, and that's a significant change in any examination of that kind it seems to me. So it seems to me that there's hope for the assessment center. . .I think maybe California is breaking through and getting into something different and that kind of experimentation is just great. And frankly we ought to be doing it here in New Mexico somehow. My feeling is that, you know, this state is the one state in the country that can really make a difference, and I don't say that out of pride of being a citizen, just raw facts. We do have some resources in this state. We are a small enough state, and particularly in the bar context just like in many other contexts, this court has broken new ground nationally. This is an area where it can do it and do things like California is doing and come up with other ideas of that nature. We're dealing with really small numbers here and we can really try different things.[71]

Hart criticized the secrecy and lack of openness surrounding the bar examination process stating, "that's not a way to treat somebody who's seeking entry into the legal profession. We ought to be more open, and we ought to be more open about a lot of other things about the examination."[72]

Along with previous experts, Hart agreed that the 70 percent pass/fail line on bar examinations is highly arbitrary and expressed his own belief that the most that can be done with essay questions is to rank order them. He voiced concern about the bar passage rate, and based on his own experience of many years of law school teaching, calculated that two percent, at most five, of the graduates of ABA-approved law schools were incompetent. He, therefore, urged that the passage rate for the bar examination be raised to the 95th percentile of the MBE scale, since nothing is gained by forcing candidates to undergo repeat examinations when, in New Mexico, over 95 percent ultimately pass. Hart also recommended that alternatives to the written bar be developed. He suggested a California-type assessment center or apprenticeship system for those who fail the written bar the first time, concluding that a written bar alone is not a solution to the problem.[73]

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[70] Id. at 105-6.

[71] Id. at 113-15.

[72] Id. at 116.

Finally, Dean Hart commented on the increased quality of current legal education as compared with that of 10 or 20 years ago. For those who decry the lessening of academic standards by the admission of minorities into law school, Dean Hart described the results of a published study on the differences in entrance criteria for law schools now and 20 years ago:

> They classified law schools into three groups or three strata. One was those law schools that had mean LSAT in their class of over 595 and there were six law schools in the United States that had that. The lowest data that I remember was under 470, those who had a mean LSAT of 470 or below in the law schools, and there were a 100 law schools in that strata; and there were, I believe, 16 law schools in the middle. So at that point in time, 20 years ago, we only had six law schools in the United States who had a mean LSAT of over 595 and there were 100 with a mean LSAT score of under 470. You compare that to today and there's no school that would end up in the lower strata. I don't believe there's a law school in the country that has a mean LSAT of under 500, and you'd end up with probably 40 percent of the law schools having a mean LSAT of over 600.
>
> In my opinion, the minority applicants who are applying for law school today without any doubt would've gotten into our law school without any hesitation, without any difficulty; there wouldn't be any question about their admissibility as few as 10 years ago.[74]

Robert J. Desiderio, current dean of the University of New Mexico School of Law, followed Dean Hart in his testimony. For the same reasons expressed by Dean Hart, Dean Desiderio registered opposition to the concept of diploma privilege.[75] He further agreed with Hart's recommendation that the 95th percentile of the MBE be set as the pass/fail line for attorney certification, though he considered 95 to be conservative and preferred 97-98.[76] This suggestion was based on data collected from the law school which demonstrated that of the 1,282 students who graduated from the University of New Mexico Law School since 1950, more than 73 percent have passed the bar the first time and 94 percent passed eventually. Of the 94 individuals who never passed, 56 ceased sitting for the examination at a

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73. Id. at 122-25; 158-60.

74. Id. at 148-50.

75. Id. at 163-64.

76. Id. at 165-66.

certain point in time. Thus, only 38 persons in the past 30 years who have continued to take the bar never passed.[77]

In summarizing his views on testing, Dean Desiderio stated:

> It seems to me that ultimately our goal should be to measure competency as to the practice of law. I think no one disagrees that the present testing looks at the past. It measures what we already know exists, doesn't look at the future, and that is whether or not we think this person can or should practice law. . . .
>
> . . . This issue is whether or not we believe that people who are flunking this examination should be passing this examination. And if we answer that yes, then what we must do is determine a process by which we can comfortably decide that this is the passing rate, that so long as we talk about the 95 percent system going to the MBE and correlating the essay to that I feel comfortable with it. I think, however, that that should be only the beginning. I think from there we should be looking at alternative testing, either for those who have passed the exam or could pass the exam as an alternative for them or for those who have failed the exam, as a measurement of those other kinds of skills we believe that a lawyer should have.[78]

The last expert witness to testify was Professor Leo M. Romero of the University of New Mexico Law School. Professor Romero spoke from his perspective as a professor of law, as well as an attorney who has represented failing bar applicants in the past. In one situation he described, a candidate failed the New Mexico Bar by approximately .47 of a point. This occurred in a context where one of the questions on the bar was eliminated by the board, and this eliminated question was one on which the applicant in question scored highly. Had the question not been eliminated, the candidate would have passed the entire examination. Premised on situations of this nature, Professor Romero advocated some sort of review process which would ensure due process to failing candidates in reappraisal of their final scores. Professor Romero endorsed Dr. Klein's suggestion of independent reading of borderline examinations, as well as an appellate procedure such as that of Alaska.[79]

In conclusion, Romero recommended:

> I believe that the first time any applicant could even look at his exam was about 1972 or '71 so that it has started to open the door up a little bit; and I think this ought to be a procedure that is visible and ought not to be done in secrecy. And what I'm suggesting are the basic due process doctrines that we laywers have applied to other areas and say why not to this particular practice which deals with lawyers ourselves.[80]

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77. Id. at 176-84.

78. Id. at 166-67.

79. Id. at 194-200. *See* In Application of Peterson, 459 P.2d 703 (1968).

80. *See* transcripts: Romero (V3:203).

Petitioners' Proposals

In light of the foregoing testimony, petitioners in *Melendez* made the following recommendations to the Supreme Court of New Mexico with respect to revisions in the Rules Governing Bar Examiners, Bar Examinations and Admission to the Bar:

1. *Establish a right of appellate review for unsuccessful bar examination applicants.* Recognizing that the bar examination purports to be an examination of minimum competency to practice law, and also recognizing the importance of accurately determining competency, 18 jurisdictions offer appellate review of bar examination papers.[81] The following criteria are important features of the review process:

(a) There should be full disclosure of examination results. For failing examinees, their papers should be available for inspection and copying. The score received for each essay question should be available, as should the total score for all essay questions. The MBE answer key should be available for comparison with the examinee's answer sheet, as well as the total score received for the MBE section. Examinees should be informed of their total score and how the grades from each section of the exam were combined into the total score. Passing scores for either or both sections should be set in advance and made public.[82]

(b) There should be a preliminary review procedure where applicants can have their grades on both sections of the bar examination verified. The District of Columbia permits unsuccessful applicants to have their papers regraded,[83] and five other states provide for regrading of borderline papers.[84] North Dakota allows failing applicants the right to meet with a member of the Board of Bar Examiners prior to any formal review process of an examination. This procedure is used to correct any possible mistakes in grading or grade tabulation, or answers to questions, and to obviate potential formal hearings.[85]

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[81] Alaska, Arizona, Colorado, Delaware, the District of Columbia, Indiana, Iowa, Michigan, Mississippi, Montana, Nebraska, North Dakota, Oregon, Pennysivania, South Dakota, Vermont, Washington and West Virginia.

[82] Twelve states disclose their methods of grading, scaling, and combining essay and MBE scores to the public: Alabama, Alaska, Arizona, California, Connecticut, Florida, Maine, Maryland, Nebraska, New Hampshire, Vermont and Washington. Several states have past bar examination questions available for a fee; California and Vermont maintain questions from every bar examination open for public inspection after results are published. California provides sample answers to each test upon payment of $5.00.

[83] "(iii) Within ten (10) days after review [of his or her examination papers] (excluding Saturdays, Sundays, and legal holidays), the applicant may submit a petition for regrading setting forth the reasons in support of such petition." District of Columbia, Court of Appeals Rule 46 1(b) § 10.

[84] Alabama, California, Idaho, Minnesota, and New Mexico. Essay questions should be reassessed by attorneys who are nonspecialists in the subject matter of the question (*see* Menocal: V:8-30). Also, regrading or reassessment should be made by an independent grader.

[85] North Dakota Supreme Court Rule 1(d). Indeed, the absence of a preliminary review procedure such as North Dakota's may result in unnecessary litigation. In Petition of Claerhout, 590 P.2d 620 (1979), the plaintiff was able to demonstrate to the Supreme Court of

(c) A hearing procedure before the Board of Bar Examiners should be created. There are five states which give unsuccessful applicants the opportunity to present written and oral arguments to the board concerning their qualifications to practice law.[86] Either a hearing officer may be appointed from the board,[87] or the full Board of Bar Examiners may participate in the hearing.[88] A formal record may be made,[89] the applicant may appear with counsel,[90], and the board, or its appointee, considers whether the applicant has demonstrated the minimum competence necessary to practice law.[91] The full board renders the final decision.[92]

(d) There should be a right of appeal to the state supreme court for applicants not admitted to practice by the Board of Bar Examiners. Of those states which grant applicants the right of appellate review, the clear majority also gives the state supreme court the right to review the actions of the Board of Bar Examiners upon appeal by the applicant.[93] Most of the normal appellate rules of procedure apply in terms of notice, evidence, and opportunity for written and oral argument.[94] The applicant should be allowed the assistance of counsel, a permanent record should be made of the hearing, and the appropriate standard of review should be whether the applicant has demonstrated the minimum competence necessary to practice law.[95]

2. *Reinstitute and activate the Committee on Cooperation whose membership should include members of the Board of Bar Examiners, judges, law school faculty and deans, and practicing attorneys.* The National Conference of Bar Examin-

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Nevada that the essay portion of the bar examination was being given more weight than permitted by the Rules of the Court. Upon examining the separate MBE and essay scores, the plaintiff proved that the method used to combine them changed the outcome of the examination by more than 13 percent. Eighteen additional applicants were found to have passing scores when properly equated.

86. Alaska, Colorado, Iowa, Nebraska, and North Dakota.

87. Alaska, Colorado, and North Dakota.

88. Alaska, Iowa, Nebraska, and North Dakota.

89. Alaska Bar Rule 7, section 10; Iowa Court Rule 117.1(k); North Dakota Supreme Court Rule 1(a)(2).

90. Alaska Bar Rule 7, section 9; Iowa Court Rule 117.1(d), (j); North Dakota Supreme Court Rule 1 (d)(2).

91. This practice is followed in Arizona, Colorado, the District of Columbia, Indiana, Iowa, Michigan, Vermont and Washington.

92. In Alaska, Iowa, Nebraska and North Dakota, the entire board makes the final determination even if a hearing officer was appointed to receive testimony.

93. Fourteen of the 19 states with appellate review authorize some form of appeal to the state supreme court.

94. *See* footnote 86, *supra*.

95. Iowa and Mississippi, for example, give the court the authority for a complete review of the examination, the applicant's answers, and the record developed by the hearing.

ers has established a Code of Recommended Standards for Bar Examinations and states in Standard 29:

> Each jurisdiction should have an active committee on cooperation consisting of representatives of the bar examining authority, the bar admission authority, the law schools, the judiciary and the bar which meets at least annually to consider issues related to legal education, eligibility and admission to the bar.[96]

Other jurisdictions that recognize the necessity for cooperation between the judiciary, law schools and the Board of Bar Examiners in working to improve legal education and the bar admission process include: Arkansas, California, Florida, Illinois, Iowa, Kentucky, Michigan, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oregon, South Dakota, and Texas.

3. *Institute an apprenticeship program as an option to the written bar examination, or, in the alternative, as an alternate licensing procedure for those who fail the written bar examination one or more times.* Although no state has yet created an apprenticeship-type system, different jurisdictions have proposed partial solutions to the problem of attorneys becoming members of the bar with no practical experience whatsoever. New Hampshire and Rhode Island require a practical skills course for all attorneys. South Carolina tests trial advocacy as a section on the written bar examination and requires 11 "trial experiences" of each attorney before he or she may represent clients.[97]

The Supreme Court of the state of Montana in its order entered in "The Matter of Proposed Amendments Concerning the Bar Examination and Admission to the Practice of Law in the State of Montana," No. 80-120, March 24, 1980, summarized the practical training problem for attorneys and its proposed solution:

> Our own profession has been critical in the recent past, from Chief Justice Burger to Chesterfield Smith, on the ability of lawyers to properly perform their duties, particularly in the trial of cases. Their criticism does not come from the general public. The composite of their comment is that we have never had so many well-qualified applicants or so many law schools as we have today. So, we must, if we change at all, provide a system that will furnish better lawyers to the profession.
>
> The collapse of the apprenticeship system has been accepted by the bar and courts with little or no regard or concern for substituting more adequate formal or practical training in the clinical sense. Plainly stated, the Bar of the United States has abdicated its role in the education of lawyers. Public authorites, namely, the courts and the bar examiners, have failed to protect the public against the effect of licensing laywers who have never seen a client or a judge. Each one of the segments referred to here have cooperated or collaborated in licensing lawyers without any practical training. Somehow they believe that graduates are qualified based on the work they do in law

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[96] *The Bar Examiner's Handbook, 2d ed.* (1980), p. 349. Standard 29 is a revision of previous Standard 28. *See also* Stevens, "A Report on Standard 28 of the Code of Recommended Standards for Bar Examiners," 34 *The Bar Examiner* 96 (1965).

[97] South Carolina Bar Rule 5B.

> school, with absolutely no clinical training that amounts to anything. They adopt a laissez-faire attitude that each lawyer who practices will become competent one way or another. This leaves the public to protect and shift for itself. And again, as this clinical training has become more and more important to law schools and to us, it has vanished insofar as the examining process after law school is concerned. It comes down to this—that it is a very important part of the process that has been avoided up to now and it is not likely to go away. . . . (*Id.* at 9-11.)

4. *Bifurcate the essay and MBE portions of the bar so that candidates who fail one section may, at their election, chose to retake only the failed part rather than the entire examination. Institute the right of a candidate to sit for the bar after having completed two-thirds of the requirements necessary for graduation from law school as an option to sitting for the bar after completing law school.*

Law school graduates face more than the rigors of the bar examination; most graduates must endure the economic hardships that occur during the months of study for the examination and the period during which they await its results. Cognizant of this problem and the fact that the bar tests chiefly on subjects completed during the first year or two of law school, Indiana permits candidates to sit for the examination prior to law school graduation.[98] In "The Education and Licensing of Lawyers: Current Proposals to Improve Competency of Lawyers," Lester Brickman suggests numerous innovations in the licensing system, such as an optional early bar examination. He states:

> Professor Charles Kelso . . . recommends that the bar examination be made available after completion of three or four semesters of law school. (Indiana Rule 13 permits taking the bar exam after the second year.) Admission to the practice of law would still not come until graduation, but the third or even the last half of a student's legal education could thereby be freed from the constraints imposed by concern over having to amass substantive analytic knowledge in certain bar exam areas. Professor Kelso further recommends:
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> 'To alleviate concern that passing the bar before graduation might destroy motivation for post-examination study, to encourage the study of lawyering competencies, and to integrate law school education, I would suggest the development of "professional boards" by accredited national, state, or regional groups. These boards would measure the competencies of attorneys in the performance of special functions, such as counseling, conducting a trial-type hearing, or researching law-related subjects. Passing one or more of these boards could (but probably should not) be made a prerequisite for certification to practice in a field or before a particular court or agency. Clinical experience in law school could itself lead to a board certification, and thus encourage students to take advantage of the opportunity for supervised "lawyering" while still in school.'[99]

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[98] Indiana Admission and Discipline Rule 13-1X.

[99] *Education and Licensing of Lawyers*, by the Council on Legal Education For Professional Responsibility, Inc. (1976), (prepared for the Conference on Education and Licensing of Lawyers held on November 19, 1976) at pp. 31-32.

In "Solving Our Credentialling Problems by Drawing on the Medical Analogy," Professor Kelso further suggests that lawyer licensing follow the medical school analogy. Under that model, states would permit students to sit for the bar examination after 12 months or 2 years of legal studies. The third year would then be free for more clinically and practically oriented work. For those students who did not pass the examination the first time, according to Professor Kelso, there would be an opportunity to have problems diagnosed and to take any necessary analytical course work while still a part of the educational institution.[100]

5. *Institute a procedure of licensing and admission to practice on motion upon a candidate's graduation from an ABA-approved law school.*

Wisconsin presents an exemplary model of the operation of diploma privilege within a state. Of the five states which have recently granted admission by diploma,[101] Wisconsin is the largest diploma-privilege state in terms of state graduates admitted to practice (1979: 441), and also in terms of out-of-state examinees admitted (1979: 22). Further, it has the second highest first-time bar passage rate of all diploma-privilege states (93 percent) for graduates of out-of-state law schools.

Moreover, the state of Wisconsin epitomizes a stable history of attorney licensing by diploma privilege: law graduates of the University of Wisconsin have been admitted to practice on motion since 1870 and those from Marquette University since 1933. The University of Wisconsin and Marquette University Schools of Law are the only ABA-approved law schools in Wisconsin. There is generally high satisfaction with the diploma privilege and, according to the Assistant Dean of the University of Wisconsin Law School, there is no indication that the diploma privilege is being reviewed or questioned at this time.[102]

The diploma privilege has withstood constitutional challenges in Wisconsin and other jurisdictions. In the state of Montana, for example, the diploma privilege was found not to be in violation of an applicant's equal protection rights where such person graduated from an out-of-state law school and was obligated to sit for the written bar examination while graduates of the University of Montana School of Law were not. The court reasoned that the appropriate standard of review was whether there was any rational justification for the existence of the diploma privilege as a mode of attorney licensing and, subsequently, determined that the diploma privilege bore a reasonable relationship to the applicant's fitness and capacity to practice law. Also, the court held that the diploma privilege does not infringe on law school graduates' right to travel freely from one state to another.

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[100] Id. at 149-170.

[101] Mississippi, Montana, South Dakota, West Virginia and Wisconsin are the five states which most recently admitted lawyers to the bar by diploma privilege. The history of diploma privilege varies with each state, with Wisconsin being the remaining jurisdiction to admit to practice on motion.

[102] In a conversation between MALDEF and Assistant Dean McChrystal on 4 June 1981, the dean stated that the diploma privilege was not likely to be eliminated in the near future and that he saw no reason why it should be. "I don't know why people have faith in the bar examination," he said. "Three years of legal education is far better."

The Supreme Court of Wisconsin reviewed all current rules on admission to the Wisconsin Bar in late 1980. Many rules were revised, but the diploma privilege remained essentially unchanged.

Huffman v. Montana Supreme Court, 372 F. Supp. 1175 (1974), *aff'd* 419 U.S. 955 (1975).[103]

6. *Procedural and statistical processes governing the writing, grading, calibration and maintenance of data by the Board of Bar Examiners should be conducted in conformity with the current state of the art in psychometrics and statistics.* Procedures that should conform to the state of the art include: careful drafting and reviewing of test questions; reducing the number of questions and subjects on the essay exam; standardizing grader instructions; concentrating grader efforts on borderline exams and reappraisals; developing a five-point scoring guide; establishing a grader calibration system; equating essay question scores to give each proper weight and ceasing the practice of eliminating certain questions from the total score; scaling the essay to the MBE; adjusting the scaled MBE score necessary to pass the bar examination in accordance with a definition of minimum competency; and performing professional validation studies on the examination as a whole.

Several jurisdictions employ modern statistical techniques in the grading of the bar examination. Grading scales in California, for example, are in five-point increments between 40 and 100 creating a 12-point scale. New Hampshire uses a 10-point scale, while Vermont has a five-point grading system similar to that suggested by Dr. Klein.[104]

In order to promote uniformity and consistency during grading, a calibration technique has been adopted by some states. Florida provides for uniformity in grading through "the services of multiple calibrated readers."[105] As Armando Menocal testified, California also uses a calibration process where 10 to 15 percent of all examination papers are regraded at random for purposes of grader conformity.

States which have recognized the need for each question to contribute equally to overall scores on the bar examination have instituted scaling or equating systems. The best example of such a system is found in the Florida Bar Rules:

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[103] The federal district court in Montana found in *Huffman* that there were legitimate distinctions between in-state and out-of-state graduates:

> Apart from the fact that the University of Montana Law School's requirements more nearly match the areas of law deemed important in Montana by the Court . . . , the more important fact remains that from its relationships with the law school and from its experience with the graduates from that school . . . the Court can empirically determine whether the breadth of the legal education of the Montana Law School measures up to the Court's expectations and whether the graduates do in fact have the requisite proficiency. The fact that as to one set of graduates the Court from its personal experience has a basis of confidence in the breadth and quality of its legal education, which from personal experience it cannot have as to another set, is ample reason for discriminating between the two." 372 F. Supp. 1175, at 1183.

See, e.g., Shigezawa, "Abolishment of Bar Examination and Adoption of Diploma Privilege," 43 *The Bar Examiner* 147 (1974); "Commentary: Admission Upon Diploma to the Wisconsin Bar," 28 Wis. Bar Bull. 33 (1975); Blackmar, "Is the Bar Examination an Anachronism?" 60 ABA Journal 1240 (1974).

[104] *See* "Information About the New Hampshire Bar Examination," Section II, Procedural Aspects of the Examination (rev. September 1980).

[105] *See* V1:66-70.

> Each examination paper produced by an applicant on the General Bar Examination shall be separately graded. The scores of each section of Part A shall be converted to a common scale by a recognized statistical procedure so that each section will be equally weighted. The sum of the converted section scores will be the total score for Part A. All total scores attained by the applicants on Part A shall be converted to the same distribution as their Multistate Bar Examination (MBE) scaled scores.[106]

Alloting the proper weight to the essay and MBE sections of the bar examination is accomplished by scaling in several states.[107] The majority of these states follows the methods recommended by the National Conference of Bar Examiners and scales the scores of the essay section to the scores of the MBE.[108]

Finally, reappraisal or borderline reappraisal of failing examination papers is routinely performed in Alabama, California, Idaho and Minnesota. For example, Minnesota Bar Rule VII.E requires the appointment of a review committee:

> whose function will be to review the examination papers of not less than the top 20 percent of the applicants who fail to achieve a passing grade on the examination. Such review shall be accomplished without prior knowledge of the grades initially assigned. . . .

7. *Eliminate the secrecy surrounding the bar examination.* Several witnesses expressed consternation regarding the lack of openness surrounding the bar examination administration. Dean Fred Hart voiced his concerns as follows:

> I think one of the most annoying facts about the bar examination for me . . . and to the applicants taking the examination is the secrecy that surrounds it . . . [Y] ou can't find out before the exam a straight answer as to how they are going to combine the MBE and the essay. That may not make a bit of difference in the end result as to who passes or who doesn't pass, but that's not a way to treat somebody who's seeking entry into the legal profession.[109]

Any secrecy surrounding the administration of the bar examination should be eliminated by: publication by the Board of Examiners of the topics and specific sub-areas within each substantive area of the law which will be tested on the subsequent bar examination; publication by the Board of Bar Examiners of actual past bar examinations and sample passing answers written by candidates at those examinations; and by maintenance of data regarding the overall general pass rate for the February and July bar examinations, as well as racial/ethnic data and statistics on first time passage, second time and subsequent passage.

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[106] Rule VI, Section 7. New Hampshire also requires that equal weight be given all essay questions; *see* "Information About the New Hampshire Bar Examination."

[107] Alabama, Alaska, Connecticut, Florida, Maine, Maryland, New Hampshire and Vermont scale essay and MBE scores in such a way as to achieve the same range. All use the equipercentile method, one of the three methods recommended by the National Conference of Bar Examiners.

[108] Only New Hampshire and Vermont, of the states which scale scores, scale the MBE scores to the essay.

[109] *See* V3:116-7.

Revisions Instituted in the New Mexico Bar Examination

In response to testimony received and recommendations submitted by the petitioners and Board of Bar Examiners, the Supreme Court of New Mexico adopted amendments effective June 1, 1981 to their "Rules Governing Bar Examiners, Bar Examinations and Admission to the Bar." In its press release of 12 May, 1981, the court stated, in part:

> For a number of years there have been wide differences of opinion over the administration of the bar examination and the grading standards and procedures used in determining the competence of prospective lawyers to practice law. The New Mexico Supreme Court had conducted an extensive review of the examination process and grading system during the past year and considered opinions from some of the nation's leading experts in the testing field taken in hearings before the Supreme Court in December 1980. It is a constant concern of the Supreme Court to protect the public from persons who are not competent to practice law while assuring that prospective lawyers who are able to adequately demonstrate their competence to practice are admitted.
>
> Prior to the February examination, the Board of Bar Examiners adopted, after consultation with the Court, examination practices and procedures aimed at improving the reliability of the examination in keeping with the most advanced state of the art of conducting examinations. The Board of Bar Examiners has retained the most widely recognized authority in bar examinations to provide continuing review of the methods and procedures of fairly administering and grading the examination. . . .
>
> The Supreme Court has now evaluated the results of the most recent examination conducted pursuant to the newly adopted procedures. It reviewed national statistics showing the relative scores of applicants in other states. It reviewed data from past examinations in New Mexico. In the past, the standard for admission in New Mexico fluctuated from one examination to another. The action by the Court today is an attempt to eliminate that fluctuation in the future. Applicants will now know what the grading procedures, scoring system and standards for the examination are before they take the exam. This is intended to preserve the integrity of the examination and grading procedures and will insure that all applicants are treated fairly.[110]

Changes reflected in the amended "Rules Governing Bar Examiners, Bar Examinations and Admission to the Bar" included new Rule 20. Rule 20 provides for a five-point grading scale on the essay portion of the bar examination, as follows:

> (1) no credit shall be given to any unanswered question or to a nonresponsive answer;
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> (2) a grade of 1 shall be given to an answer that is not acceptable and

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[110] Press release, 12 May 1981, Santa Fe, New Mexico.

> shows a lack of ability and/or understanding in analyzing the issues involved;
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> (3) a grade of 2 shall be given to an answer that demonstrates that the applicant's understanding of the issues and analyzing of the same is minimal and does not demonstrate an adequate level of competence to practice law in relation to the subject matter(s) of the question;
>
> (4) a grade of 3 shall be given to an answer that is neither clearly failing or clearly passing;
>
> (5) a grade of 4 shall be given to an applicant who demonstrates a good knowledge of the law and ability to analyze the subject matter(s) of the question;
>
> (6) a grade of 5 shall be given to an applicant who demonstrates a superior knowledge of law and ability to analyze the subject matter(s) of the question.[111]

Rule 20 further stipulates that all essay questions for each applicant will be added together after grading and then scaled to the MBE portion of the examination. A final passing score of 130 is established for subsequent examinations and, other than experienced attorneys sitting for the New Mexico Bar, anyone who receives a scaled essay/MBE score of 130 will pass the entire examination.[112] Additionally, the New Mexico Supreme Court adopted most of Dr. Klein's suggestions including the use of monitors, increased grader uniformity, automatic borderline reappraisals, and a reduction in the number of essay questions.[113]

Subsequent to *Melendez* and the consequent revisions in bar examining procedures, bar passage for first-time takers in New Mexico for the July 1981 examination was approximately 92 percent for University of New Mexico law graduates with no appreciable disparity between first-time white and Hispanic applicants.[114]

In part, this unprecedented parity in performance between white and Hispanic groups is due to the high qualifications of both groups, despite differences that may exist with LSAT scores. It is certainly also attributable to the greater professionalization and fairness of the New Mexico bar examination, prompted by the recently instituted procedural revisions.

In the words of the Honorable Justice Payne, presiding justice in *Melendez*, the hearing represented "a willingness to accept the premise that we may not yet be the repository of all truth."[115] Indeed, Justice Payne views the *Melendez* hearing as the commencement of a process by which the traditional adherence to the status quo may be examined in light of the developing state of the art in testing and bar examinations. Neither Justice Payne, the petitioners, nor the author views the existing modifications in New Mexico's bar examination as the ultimate answer. Justice Payne expressed his personal hope for continuing study, policy analysis and dialogue between the court and Board of Bar Examiners with respect to topics such as a bifurcated bar, an assessment or apprenticeship program, appellate review and a committee on cooperation.[116]

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[111] "Rules Governing Bar Examiners, Bar Examinations and Admission to the Bar," New Mexico Supreme Court Judicial Pamphlet 14, with amendments through June 1, 1981.

[112] Ibid.

[113] Interview with Thomas Dewey, Esq., Chair of the Board of Bar Examiners of New Mexico, 18 February 1982.

[114] Source: data from the University of New Mexico School of Law, 13 April 1982, and conversation with Dean Robert Desidero, Dean of the University of New Mexico School of Law, 5 April 1982.

[115] Interview with Hon. Justice H. Vern Payne, 19 February 1982.

Criticisms, both constructive and unconstructive, have been leveled at the bar examination process for many years. But it can be fairly stated that there has been little innovation on the part of most bar examining authorities in response to suggestions for improvement and modernization of attorney licensing. As a Chicago commentator analogized:

> Exactly as the John Hancock Building dramatizes the Water Tower's obsolescence, 75 years of development in law training, testing and practice expose Illinois' old bar exam as obsolete and irrelevant to today's professional and public needs.[117]

Other authors criticized anachronistic elements in bar examinations in their own jurisdictions such as: insular bar exam question preparation devoid of conference input; the failure to publish examination results fully; the failure to perform periodic studies on the examination; purposeless and unfocused bar applicant interviews; a lack of criteria for exclusion on moral grounds; untried and nonuniform preceptor requirements; the success of examinees resting more on their participation in commercial cram courses than in legal knowledge and analytical ability; the constraining and chilling effect of the bar exam on law school curricula given the numerous subjects tested in many states; and the failure of the bar to test important lawyering skills which are necessary to safeguard the public from incompetent lawyers.[118]

As the Associate Director of the Illinois Institute for Continuing Legal Education wrote in 1971:

> Qualification by special written examination may have been a real improvement when it was originated. However, the bar examination *as a qualifying process* has been made superfluous by the imposition of a series of eligibility requirements and indicators of fitness and aptitude employed prior to and during preparatory stages in legal training—indicators of legal potential that may well be *more* reliable, *more* fair than the current mass examination.[119]

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[116] Ibid.

[117] Charles C. Bingaman, "Illinois Bar Examination: Time For a 75-year Overhaul," Illinois Bar Journal, (October 1971): 129-38.

[118] *See, e.g.*, Carol Cox Stitt, "The Texas Bar Examination Fails the Test," 47 Texas L. Rev. 649 (1968-69); Comment, "Admission to the Pennsylvania Bar: The Need for a Sweeping Change," 118 U. Penn.L. Rev 945 (1970); Charles B. Blackmar, "Is the Bar Examination an Anachronism?", 60 ABA Journal 1240 (1974); and Stephen P. Klein and John F. O'Hara, "Is the Bar Examination an Adequate Measure of Lawyer Competence?" 50 *The Bar Examiner* 20 (1981).

[119] Bingaman at 129.

He classifies the bar examination as a redundancy based on three assumptions. (1) that there exists an unqualified group of applicants; (2) that the bar examination can successfully identify such a group if it does exist; and (3) that the failure to answer written questions adequately on the examination is tantamount to being ill-qualified to practice law.[120]

Indeed, numerous other legal educators and scholars have questioned the relevancy of the bar examination to measure what lawyers do in practice.[121] In a 1979 report by the Task Force of the Section of Legal Education and Admissions to the Bar, the Task Force listed seven fundamental skills for lawyer competency. They included the ability to:

- Analyze legal problems;
- Perform legal research;
- Collect and sort facts;
- Write effectively;
- Communicate orally with effectiveness;
- Perform important lawyer tasks, such as:
  (i) interviewing;
  (ii) counseling; and
  (iii) investigation; and
- Organize and manage legal work.[122]

It is indisputable that the present bar examination format as it exists in the majority of states does not measure more than two of the above-listed competencies. Even then, the measurement accuracy of the examination is questionable, and it is duplicative of law school examinations, without giving due credence to the information that the schools have gathered about students' competencies in three years or to the very high credentials needed today for entrance to law school.

In 1980, the California Committee of Bar Examiners in conjunction with the National Conference of Bar Examiners undertook an experimental research program to assess practical attorney competencies in addition to those normally measured by written bar examinations.[123] Although the results of the California experiment have yet to be fully analyzed, the research signals the way for jurisdictions to move beyond outdated and obsolete examination methodologies based principally on unexamined premises, tradition and adherence to the status quo. The California bar examination experiment consisted of two components, the "special session" and the "assessment center."

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[120] Id. at 132-35.

[121] Leon Green, former Dean of Northwestern Law School stated, "I dare suggest there is not a single similarity between the bar examination and what a lawyer is called upon to do in law practice, unless it be to give a curbstone opinion." *See* Charles L. Bingaman, "Illinois Bar Examination: Time For a 75-year Overhaul," Illinois Bar Journal (October 1981): 136.

[122] Stephen P. Klein and John F. O'Hara, "Is the Bar Examination an Adequate Measure of Lawyer Competence?" 50 *The Bar Examiner* 29 (1981).

[123] Ibid.

In the "special session" the examination was divided into 6 sections. Sections 1, 2, and 4 consisted of essay questions, sections 5 and 6 were devoted to the MBE and section 3 was the experimental "special session." Students were informed that this section of the exam would only be considered if students did not pass the other sections; thus it could only improve their overall scores. The "special session" included the following components:

1. *Research tasks* in which applicants were provided with relevant (and some irrelevant) factual and legal information about a hypothetical client's case. The applicants were first asked to evaluate the degree to which certain of these materials supported or contradicted various propositions involved in the case, and applicants recorded their rating on a form that later was machine scored. On the second part of the task, applicants were to prepare a memorandum addressing specific aspects of the case and indicating the major strengths and weaknesses of it. The purpose of this task was to assess the applicant's ability to both evaluate the effects of certain facts, statutes and case law on a client's case and integrate and present the results of this analysis.

2. *Video tasks* in which applicants were provided with written materials describing a case, and given time to review these in order to become more familiar with the proceedings they were about to observe. The applicants were then shown a brief, video-taped segment of the examination of a witness in the case. One to three questions appeared on the screen at the end of each segment relating to the appropriateness of the objections made and the strategy used by counsel. Applicants were given four to eight minutes to respond to the questions and asked to complete a total of eight segments. The purpose of the video tasks was to assess the ability of the applicants to cope with oral arguments and testimony as they occurred, such as during the examination of a witness at a hearing.

The "assessment center" component was designed to test the applicant's oral advocacy abilities, interviewing and counseling abilities, and ability to handle a case from beginning to end. In the "assessment center," each applicant performed a set of tasks, including three oral and two or three written assignments, as the plaintiff's attorney in one case, and a different but similar set of tasks as the defendant's counsel in another case. Each set of tasks was designed to simulate the major steps in the handling of a case and required one day to complete. As in the "special session," applicants were selected randomly and informed that participation in the assessment center could improve, but not diminish, an applicant's chances of passing the bar examination.

It is hoped that California's bold experiment will be repeated in that state and others in the process of reviewing their bar examination procedures.

In summary, the state of New Mexico through *Melendez* embarked upon an important, and long overdue, assessment of the present bar examination system, what it purports to measure, and what is actually accomplished. New Mexico has set a precedent which all other jurisdictions should emulate. The exclusion from practice of qualified individuals, be they minority or majority culture, is too high a price to pay for adhering to outmoded attorney licensing practices.

CHAPTER III
THE SIMULATED MCAT EXAMINATION

Introduction

In minority recruitment, an area where there are arguably few noteworthy successes, the efforts of the Student National Medical Association, Inc. (SNMA) in developing both a simulated MCAT examination and an accompanying intervention program represent an important step forward.[1] In contrast to the majority of recruitment programs focused on blacks and Hispanics, the simulated MCAT (PMSAT) seeks to identify weaknesses and deficiencies in acquired knowledge and skills and to enrich the latter before a student enters professional school. It accomplishes this while also increasing the pool of professional school applicants.

Thus, the simulated MCAT examination and accompanying intervention materials attempt to obviate both the disparate entrance credentials of students and the need for remedial programs in medical schools which continue to characterize the experience of many minority medical students. The importance of the simulated MCAT examination and subsequent intervention, based on diagnosed areas of deficiency, is that they make entrance credentials and basic preparation for professional studies more equal between minorities and non-minorities. Thus, the simulated MCAT program has the potential to alter significantly the perceptions of minority and disadvantaged students about the entire medical education process, from the probability of scoring well on the New MCAT to the probability of successfully completing medical studies.

Background

Developed in 1978 in response to a perceived need that minority students gain familiarity with the content, format and rigor of the New Medical College Admissions Test (hereafter New MCAT), the PMSAT was designed by the Student National Medical Association, Inc. as one of its services to assist minority and other disadvantaged students in improving their test performance on the New MCAT and their opportunities for gaining entrance to and succeeding in medical school.[2]

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[1] This is not meant to denigrate the fine work of legal recruitment programs such as the Council on Legal Education Opportunity (CLEO) and other stellar efforts conducted by individual institutions of higher education or by coalitions. It is rather intended as a general comment on successful recruitment efforts both in terms of substantially increasing the numbers of minorities who would not have attended law school were it not for the recruitment contact, as well as ensuring adequate academic preparation for those students who are recruited.

[2] Student National Medical Association, "Background of the Pre-Medical Student Achievement Test (PMSAT^{R})," p. 1.

As described by the Student National Medical Association in one of its publications:

> The intent in building the PMSAT was to design and develop an instrument that would be useful in identifying students from various ethnic, minority or other disadvantaged backgrounds who, if they continue to develop educationally at the pace indicated by their scores on the PMSAT, may face serious difficulties with the New MCAT unless they receive additional educational intervention.[3]

Students targeted for the simulated MCAT are those who are nearing completion of their freshman year of undergraduate pre-medical studies or who are in their sophomore or junior years. The simulated MCAT is predictive in the sense that it indicates how a student will probably perform on the New MCAT, assuming future educational progress commensurate with the past. But it is also, and most importantly, diagnostic in that it provides a mechanism by which students who perform poorly on the simulated MCAT can be evaluated to determine their need for enrichment and reinforcement of critical thinking and writing skills.[4]

Structure of the New MCAT and Simulated MCAT

The New MCAT is a predictive examination intended to assess an applicant's ability to succeed in the first years of medical school. Its six substantive areas are divided into four major subtests as follows: (1) Science Knowledge (including biology, chemistry and physics); (2) Science Problems (testing problem solving and assessing knowledge in biology, chemistry and physics); (3) Skills Analysis: Reading; and (4) Skills Analysis: Quantitative.[5]

One of the three objectives of the simulated MCAT is to *evaluate* at an early stage the academic strengths and deficiencies of pre-medical students as they relate to skills tested on the New MCAT. Secondly, the simulated MCAT is intended to *predict* future performance on the actual MCAT if no intervention were provided. And finally, the simulated MCAT is designed to *provide a statistically valid simulation* of the experience of writing the New MCAT with respect to content validity, format, intensity and testing conditions.[6]

The New MCAT and simulated MCAT (PMSAT) compare as follows:

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3. Ibid.

4. Student National Medical Association, "Pre-Medical Student Achievement Test (PMSAT^{R}) Development Plan and Procedures," p. 1.

5. Student National Medical Association, "Background of the Pre-Medical Student Achievement Test," p. 2.

6. Id. at 3.

	New MCAT		PMSAT	
	Number of Questions	Maximum Time	Number of Questions	Estimated Time
Science Knowledge	125	135 mins.	112	80 mins.
Biology	(38)		(34)	
Chemistry	(49)		(44)	
Physics	(38)		(34)	
Science Problems	66	85 mins.	36	38 mins.
Skills Analysis: Reading	68	85 mins.	40	56 mins.
Skills Analysis: Quantitative	68	85 mins.	40	56 mins.
	327	390 mins. (6½ hrs.)	228	230 mins. (approx. 4 hrs.)
Average time per item	1.193 mins.		1.008 mins.	

Thus, the PMSAT approximates the New MCAT except that it is somewhat shorter and less difficult, since it is aimed at students in their first year of pre-medical studies. Although no formal validity studies between the two instruments have been released to date, the preliminary coefficients and spread of scores between the two examinations appear to be nearly identical according to the developer of the PMSAT.[7] It can, therefore, be assumed that validity studies due to be completed in the future will corroborate the high correlation between the New MCAT and the PMSAT.[8]

Intervention Program

The intervention program developed in conjunction with the simulated MCAT is in its third year of operation. In 1980-81, approximately forty students participated in the program conducted by the SNMA. For the 1981-82 year, the Educational Policy Research Institute (EPRI) in Washington, D.C. expanded and refined the intervention program, as described below.

There are now two distinct phases. Phase I, which accommodates up to forty minority pre-medical students, is administered during the school year on Saturdays for eight consecutive weeks. The enrichment exercises concentrate on reading, quantitative problems and study skills and last from between 9:00 a.m. to 4:00 p.m. Phase II began in June 1982. Students from the first phase were invited to participate in another eight-week course, offered between 9:00 and 4:00, Monday through Friday. Areas of study included quantitative and reading skills as well as substantive science course work.

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[7] Telephone conversation, James L. Angel, Health Professions Educational Service, Inc., Washington, D.C., 18 May 1982.

[8] The simulated examination was administered in experimental form to 600 students between 1979 and 1980 and in final form 700 times beginning in December 1980. Some of the universities that have administered the PMSAT include: Georgetown, Howard, New York University, Columbia, Cornell, UCLA, Baylor and University of Texas.

Simulated MCAT examination results from students who participated in Phase II of the intervention program during the summer of 1982 were significant in terms of pre- and post-test gains. Although statistical comparisons will not be available for some time because of the comparatively small number of students who have completed Phase II, initial data, both numerical and anecdotal in nature, give reason for optimism about the general efficacy of the intervention program in assisting minorities to improve skills and enhance their chances for medical school admission.[9]

It is important to emphasize that the intervention strategies which are now being implemented are not coaching programs. Where coaching denotes specific test preparation over a short term with the goal of improving the test score only, intervention, as it is used here, signifies actual skills development which produces, as a by-product, higher test scores.

The quintessential element in the MCAT intervention program is its diagnostic component where individual student deficiencies are assessed and analyzed based on the student's performance on discrete portions of the PMSAT. Each student receives an individual diagnostic printout indicating his or her relative strengths in each subject area tested on the New MCAT, using the same scoring system as the actual MCAT. Subsequent intervention work can then be tailored to increase skill development in areas of weakness.

An illustration of one page of the diagnostic printout that a student receives on his/her PMSAT performance follows in Table 1:

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9. According to Dr. Beatriz Clewell of the Educational Policy Research Institute, Inc. in Washington, D.C., only 15 students participated in Phase II of the intervention program in the 1982 summer session. Attrition from Phase I was attributed to some students' returning home for the summer vacation and others' needing to work full-time during the summer recess. However, the sites of the MCAT intervention program have been expanded this year to include Newark, New Jersey and the South Bronx as well as Washington, D.C. Thus, a wider student pool will be available for analysis next year, including significantly more Puerto Rican participants. As stated before, the preliminary results from the program have been excellent.

INCORRECT ANSWER CATEGORIES

General Biology Topics in New MCAT

NAME ____________________

TEST SITE ____________________

TEST DATE ____________________

		TOPICS	INCORRECT ITEMS	
			Form A	Form B
I.	Molecular Biology			
	A.	Enzymes	(63,64,65)*	7
	B.	Bioenergetics	3	17,(68)*
	C.	Nucleic acids	8	
	D.	Biosynthesis		
II.	Cellular Biology			
	A.	Eucaryotic cell	4	
	B.	Viruses and bacteria (procaryotes)		
III.	Development and organismal biology			
	A.	Embryology	10,15	
	B.	Respiratory, circulatory, lymphatic, renal, and skin systems	14,(69,70,71)*	14 (69,70,71)*
	C.	Digestive system		12
	D.	Skeletal and skeletal muscle systems	2	1
	E.	Nervous and endocrine systems		13
	F.	Reproductive system	12	
IV.	Behavior, population biology, and evolution			
	A.	Behavior		11
	B.	Genetics		6
	C.	Evolution and comparative anatomy	9	

*S.P.—Science Problems Section (Item 57-74)

STUDENT NATIONAL MEDICAL ASSOCIATION, INC.

Implications of the PMSAT and Intervention Experiences

The PMSAT is important because it provides minority pre-medical students with a testing experience comparable to the one for which they are preparing. Moreover the PMSAT is administered under actual test-taking conditions, the types of items are identical to those on the New MCAT, and the examination affords applicants the opportunity to predict their performance on the actual MCAT using the same scaled score, without fear of the scores being reported to medical schools. Such an experience contributes to test-wiseness and also builds confidence in students.

Where it is evident that a student's probability of gaining entrance to medical school is remote based on predicted test performance, the intervention program provides students the opportunity to ameliorate skill deficiencies. Thus, student reactions to the PMSAT and intervention strategies have been quite positive in that they perceive these as mechanisms by which they can increase the likelihood of their admission to medical school, as well as gain a higher level of preparation for the rigors of medical studies.

The simulated MCAT examination and intervention materials that are described have broad research and policy implications for the early identification and recruitment of students, particularly those from minority and disadvantaged groups who historically have found the MCAT examination to be a serious impediment. The importance of the simulated examination is that it could potentially obviate what may be termed the "deficit" models under which many students now gain access to professional school.[10] Instead, it assists pre-medical students early in their undergraduate years to identify analytical weaknesses and remedy any deficiencies prior to sitting for the New MCAT. It also has the potential of increasing, within the near future, the pool of students qualified to embark on a medical career. Moreover, it is believed that the skills developed through the intervention program are transferable to actual medical school performance. A sample of the simulated MCAT follows this chapter in Appendix A.

Conclusion

MALDEF applauds the efforts of the Student National Medical Association and Educational Policy Research Institute for their comprehensive approach to minority student recruitment and professional school preparation. Indeed, the initial results of the PMSAT and accompanying intervention materials indicate that student preparation for medical studies, test-wiseness and confidence are increased by the program.

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[10] MALDEF has always advocated the use of numerous factors for admissions decisions, in conjunction with the common predictors of grade point average and standardized test scores. However, the majority of educational institutions continue to place significant, if not blatantly incorrect, weight on test scores. To obviate the effect which assessing such a narrow band of student aptitudes has on many qualified minority persons, we have consequently supported the use of special admission criteria to counteract overreliance on the traditional predictors. Special admissions, however, may have damaging psychological ramifications for the student who is labeled as being less "traditionally" qualified than his majority peers. It is for this reason that MALDEF applauds the simulated MCAT and intervention efforts to minimize existing test score disparities between groups.

The combined activities appear to accomplish the following objectives which the SNMA identified as goals for participating students:

- To practice and become exposed to New MCAT-type test items;
- To acquire test scores without risk of low scores being reported to medical schools for admissions purposes;
- To experience the intensity of anxiety and stress that is caused by test difficulty and extensive test time periods;
- To develop overall confidence, test-wiseness, insights and test-taking skills when approaching standardized admissions examinations such as the New MCAT; and
- To accurately evaluate academic areas of strengths and weaknesses and assess their content preparedness for the New MCAT.[11]

Similarly, the legal profession has the opportunity to affect access to the legal profession for minority and disadvantaged students through the development of an analogous simulated LSAT and intervention program. As in the case of the simulated MCAT, the sections of the proposed simulated LSAT would be identical in content and type of item to those of the New LSAT and would test the same critical skills. These skills would be identified through the LSAT critical skills manual which the examination manufacturers use in development of test items. Such a simulated LSAT would allow for diagnosis and development of the critical thinking skills required for successful performance on the LSAT, as well as performance at a high level in law school.

In consultation with leading educators and test developers, MALDEF presented a proposal to the Law School Admission Council Minority Taskforce in May of 1982. Grounded in the philosophy and experience of the simulated MCAT experience, the proposal outlined procedures and rationales for establishing a simulated LSAT and intervention program. It is our fervent hope that such an undertaking is commenced in the near future for the dual purposes of making the scores of minority and non-minority groups more equal and permitting minority students to prepare for and, thereby, enter law school with the highly developed skills essential to academic success in the law. Such a program would not only facilitate minority recruitment in an era of stagnation in minority enrollment in the law, but also would decrease the need for supportive programs for disadvantaged students once they enter law schools.[12]

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[11] "Background of the Pre-Medical Student Achievement Test," at 4.

[12] According to the American Bar Association surveys of ABA-accredited law schools, there has been undiscernable improvement in the percentage of minorities in ABA law schools between 1975 and 1980:

	1975–76	1980–81
Total enrollment	116,991	125,397
Black	4.38%	4.43%
Hispanic	1.57%	2.02%
Asian, Pacific	0.94%	1.34%
American Indian, Alaskan	0.25%	0.31%

APPENDIX A

PREMEDICAL STUDENT ACHIEVEMENT TEST

PMSAT(R) SAMPLE TEST QUESTIONS

This sample test is an approximation of the content and type of questions to be found on the Premedical Student Achievement Test (PMSAT) of the Student National Medical Association. This exercise provides practice with test items and an answer grid, although the PMSAT uses a separate answer sheet. You may work the questions as you study the practice exercises. A key is included at the end of the final page.

PART I: SCIENCE TEST

DIRECTIONS: For questions numbered 1-9 select the best answer. If you are not certain of an answer, eliminate those alternatives which you know to be incorrect and then select an answer from among the remaining alternatives. Indicate your selection in the corresponding oval on your answer form. NOTE that the answer form provides for five alternatives for each question. However, some questions have only three or four alternatives. In all instances use only the corresponding lettered ovals and ignore any extras. A periodic table follows the last page of the test. (Not in sample test.)

1. A small spherical, rodshaped,or filament-shaped organelle within the cytoplasm that functions in cellular respiration is known as the:

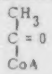
A. mitochondria
B. endoplasmic reticulum
C. golgi apparatus
D. vacuole
E. pinocytotic vesicle

Ⓐ Ⓑ Ⓒ Ⓓ Ⓔ

2. What force(s) regulate the passage of sodium across the nerve cell membrane?

A. concentration gradient
B. electrical charge
C. sodium pump
D. all of the above

Ⓐ Ⓑ Ⓒ Ⓓ Ⓔ



$$\begin{array}{c} CH_3 \\ | \\ C=O \\ | \\ CoA \end{array}$$

3. The above represents

A. acetyl co-enzyme A, which condenses with oxaloacetate to form citrate
B. pyruvate, the end product of glycolysis
C. ethanol, the end product of fermentation
D. co-enzyme required for electrol transport
E. succinyl CoA, an intermediate in Krebs cycle

Ⓐ Ⓑ Ⓒ Ⓓ Ⓔ

4. The correct electronic configuration of the fluoride ion, F^-, is

A. $1s^2 2s^2 2p^5$

B. $1s^2 2s^4 2p^4$

C. $1s^2 2s^2 2p^4 2d^1$

D. $1s^2 2s^2 2p^6$

Ⓐ Ⓑ Ⓒ Ⓓ Ⓔ

5. Four solutions are prepared by dissolving 1.0 grams of each of the following nonelectrolytes in 100 grams of water: CH_3OH, C_2H_5OH, $C_2H_4(OH)_2$, and $C_3H_5(OH)_3$. Which solution has the lowest freezing point?

A. CH_3OH

B. C_2H_5OH

C. $C_2H_4(OH)_2$

D. $C_3H_5(OH)_3$

Ⓐ Ⓑ Ⓒ Ⓓ Ⓔ

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6. Which of the following molecules will have no net(zero) dipole movement?

A. H_2O (bent)

B. CCL_4 (tetrahedral)

C. HCN (Linear)

D. SO_2 (bent)

Ⓐ Ⓑ Ⓒ Ⓓ Ⓔ

7. Which of the following alcohols should be the least soluble in water?

A. C_2H_5OH

B. C_3H_7OH

C. $C_8H_{17}OH$

D. $C_{12}H_{25}OH$

Ⓐ Ⓑ Ⓒ Ⓓ Ⓔ

8. Putting a bag of ice on a swelling keeps the area cooler longer than a bag of the same amount of cold water mainly because ice

A. has a higher specific heat.
B. has a higher heat conductivity.
C. can be made much colder than water.
D. requires a lot of energy to melt.

Ⓐ Ⓑ Ⓒ Ⓓ Ⓔ

9. The potential difference between two oppositely charged parallel plates

A. increases when the distance between the plates decreases.
B. decreases when the distance between the plates decreases.
C. does not depend on the distance between the plates.

Ⓐ Ⓑ Ⓒ Ⓓ Ⓔ

PART II. PROBLEMS IN SCIENCE

DIRECTIONS: QUESTIONS 10-12 are organized in groups of three, and each group is preceded by descriptive material. First read the material, then select the one best answer to each questions in the group. If you are not certain of an answer, eliminate the alternatives which you know to be incorrect, and then select an answer from among the remaining alternatives. Indicate your selection in the corresponding oval on your answer form. NOTE that the answer form provides for five alternatives for each question. However, some questions have only three or four alternatives. In all instances use only the correspondingly lettered ovals and ignore any extras. A periodic table is attached to the last page of the complete test. (Not in sample.)

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10. In meiosis, one set of chromosomes is passed on to each gamete. In sexual reproduction, the union of any two gametes occurs by chance. This means that through meiosis two alleles are separated. Homologous alleles are then reunited during sexual reproduction.

An alternate form of the same functional gene that may occupy the same locus is known as a (an)

A. mutation
B. chromosome
C. gamete
D. allele
E. allograph

Ⓐ Ⓑ Ⓒ Ⓓ Ⓔ

11. In sexually reproducing diploid organism, approximately how many alleles should be available for each gene?

A. 2
B. 8
C. 23
D. 46
E. 72

Ⓐ Ⓑ Ⓒ Ⓓ Ⓔ

12. The process of reuniting homologous alleles during sexual reproduction is known as

- A. genetic variation
- B genetic recombination
- C. Hardy Weinberg Law
- D. random reduction
- E. mutation

Ⓐ Ⓑ Ⓒ Ⓓ Ⓔ

PART III: READING TEST

DIRECTIONS: For the questions numbered 13-16, select the one best answer. If you are not certain of an answer, eliminate those alternatives which you know to be incorrect and then select an answer from among the remaining alternatives. Indicate your selection in the corresponding oval on your answer form. NOTE that the answer form provides for 5 alternatives for each question. However, some questions have only three or four alternatives. In all instances use only the correspondingly lettered oval and ignore any extras. Each of the following groups of questions is preceded by descriptive material. First study the material; then select the one best answer to each question in the group.

READING SELECTION

It was in 1964 that a major epidemic of rubella (German measles) swept throughout the United States. Today, 15 years later, the disastrous consequences of this outbreak are still being recorded in the medical literature. More than 20,000 infants were born with congenital rubella. Large numbers of women had therapeutic abortions (that is, abortions induced to save their lives) or had natural occurring (spontaneous) abortions. It is impossible to assess the personal tragedy to the many thousands of families that have had to cope with caring for their multi-handicapped children. The disabilities have included one or more of the following defects: eye lesions such as cataracts or glaucoma, deafness, heart malformation, and brain damage causing mental retardation, cerebral palsy, or severe behavior disorders.

Five years after the major epidemic, a live, less virulent rubella virus vaccine was licensed for use in 1969. The goal of the rubella immunization program at that time was two-fold; 1) to immunize as many infants and children as possible on a routine basis; and 2) to selectively immunize teenage girls and women of child-bearing age.

It is anticipated that routine immunization of children would decrease the spread of rubella virus in the home and in the community. Thus, the risk of exposure to rubella during pregnancy would be reduced. This plan, if successful, would prevent epidemics that had occurred fairly regularly at six-to-nine year intervals in the past. Such epidemics were followed by the birth of thousands of infants with congenital rubella and by an increase in the incidence of therapeutic abortions. Also, if the vaccine-induced immunity proved to be long lasting, the future generation of women of child-bearing age would be protected.

13. The main topic of this passage is

- A. immunization programs.
- B. birth defects and their causes.
- C. abortion and its justification.
- D. rubella infection and its control.
- E. communicable disease and its eradication.

Ⓐ Ⓑ Ⓒ Ⓓ Ⓔ

14 A therapeutic abortion differs from a spontaneous abortion in that the latter

- A. has been induced by natural physical causes.
- B. can be performed only as a life-saving measure.
- C. is recognized as an acceptable medical procedure.
- D. can be required to prevent birth-defective children.
- E. is considered a legalized abortion.

Ⓐ ○ ○ ○ ○

15. When a rubella vaccine was licensed for use in 1969, this meant that the vaccine

A. could be administered legally.
B. had been approved by the medical profession.
C. was being produced by a licensed drug company.
D. had been tested and found effective as a rubella vaccine.
E. could be used in government-approved immunization programs.

Ⓐ Ⓑ Ⓒ Ⓓ Ⓔ

16. One of the target population groups for the rubella immunization program was

A. all infants.
B. teenage girls.
C. pregnant women.
D. all children 6 to 9 years old.
E. most women under 40 years of age.

Ⓐ Ⓑ Ⓒ Ⓓ Ⓔ

PART IV: QUANTITATIVE TEST

DIRECTIONS: For the questions numbered 17-21, select the one best answer. If you are not certain of an answer, eliminate those alternatives which you know to be incorrect and then select an answer from among the remaining alternatives. Indicate your selection in the corresponding oval on your answer form. NOTE that the answer form provides for 5 alternatives for each question. However, some questions have only three or four alternatives. In all instances use only the correspondingly lettered oval and ignore any extras. Each of the following groups of questions is preceded by descriptive material. First study the material; then select the one best answer to each question in the group.

Year	Dogs	Cattle	Horses	Sheep	Swine	Cats	Goats	Other animals	Man	Total
1938	8,452	413	32	164	42	207	11	44	47	9,412
1939	7,386	358	36	17	38	269	10	172	30	8,316
1940	6,194	326	25	53	71	260	4	277	28	7,238
1941	6,648	418	39	68	159	294	9	212	30	7,877
1942	6,332	288	15	48	32	250	12	160	28	7,165
1943	8,515	349	35	45	60	316	19	310	41	9,690
1944	9,067	561	32	40	43	419	14	311	53	10,540
1945	8,505	487	46	11	30	466	10	373	35	9,963

17. Which of the following animals had the highest relative rate for rabies?

A. Data not given.
B. Goats.
C. Horses.
D. Swine.

Ⓐ Ⓑ Ⓒ Ⓓ Ⓔ

18. Assuming a population of 150,000,000 persons, about what was the morbidity rate for rabies?

A. 0.24 per million.
B. 36.50 per million.
C. 99.63 per million.
D. 292.00 per million.

Ⓐ Ⓑ Ⓒ Ⓓ Ⓔ

19. In general, what appears to be the trend in number of cases of rabies?

A. Constant.
B. Downward.
C. Upward.
D. Variable.

Ⓐ Ⓑ Ⓒ Ⓓ Ⓔ

20. Which animal shows the greatest relative variation in number of cases of rabies?

A. Cattle.
B. Goats.
C. Sheep.
D. Swine.

Ⓐ Ⓑ Ⓒ Ⓓ Ⓔ

21. The year 1944 had the greatest number of cases of rabies reported. Which animals show the maximum number of cases for some other year?

A. Cattle.
B. Dogs.
C. Goats.
D. Men.

Ⓐ Ⓑ Ⓒ Ⓓ Ⓔ

Key: 1=A, 2=D, 3=A, 4=D, 5=A, 6=B, 7=C, 8=D, 9=C, 10=D, 11=A, 12=B, 13=D, 14=A, 15=D, 16=B, 17=A, 18=A, 19=D, 20=C, 21=C

CHAPTER IV
HISTORY AND DESCRIPTION OF THE OREGON STATE BAR'S AFFIRMATIVE ACTION PROGRAM*

Introduction

For the past five years, the Oregon State Bar has operated an Affirmative Action Program (AAP). The AAP has a staff of one full-time director and one part-time assistant and operates out of the Oregon State Bar headquarters.

This chapter describes the Affirmative Action Program in the hope that through this, others will be encouraged to work with their state or local bars to supplement the affirmative action programs of their area law schools. The discussion that follows is divided into the history of the program and a description of its current operations.

History

In 1973 the Oregon State Bar Committee on Civil Rights took official notice of the fact that while approximately five percent of the population of Oregon consisted of minority persons,[1] there was less than one-half of one percent active minority membership in the Oregon bar — only 19 minority members of a bar of 4,000.[2] The Oregon bar is also an integrated bar[3] where membership is a prerequisite to practicing law in Oregon state courts. The committee also found that:

> Over the past several years, it has become apparent that cultural disparities and economic disadvantages among Americans, including Oregonians, make it difficult if not impossible for our society to integrate merely by offering all citizens equal opportunity.
>
> Accordingly, we have come to the realization that particular incentives and encouragements must be introduced in order to obtain actual integration.[4]

In essence, the committee believed that an affirmative action plan should be adopted by the bar and proposed that such a plan: (1) include outreach; (2) work on a longitudinal basis with students from high school through college, law school and the bar exam, and (3) be guaranteed and funded primarily by the bar.[5]

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* The current AAP Director is Jose Mata, Esq.

[1] For purposes of this article, the term "minority" means any person whose origins are American Indian or Alaskan Native, Asian or Pacific Islander, black or Hispanic and who maintains a cultural identification with such origin through cultural affiliation or community recognition.

[2] Or. Rev. Stat. §§ 9.005 through 9.665 are commonly known as the Oregon State Bar Act. The Act integrates the bar into law by statute.

[3] *Annual Report of the Civil Rights Committee of the Oregon State Bar* (1973).

[4] Id. at 35.

This recommendation was taken before the bar at the 1973 annual membership meeting where the members awarded the committee $500 to develop an affirmative action plan based on these 1973 guidelines. In addition, the committee was to make a report at the 1974 annual meeting.[6]

In 1974 the committee put its affirmative action plan before the membership. Highlights of that plan included a proposal of a consortium with Portland State University whereby a pre-law component would be designed to enhance the reading, writing and logical reasoning skills needed to prepare undergraduate minority students for the study of law. It was estimated that such a program could be launched for $58,000.[7] While the concept was approved,[8] the request for membership funding was rejected.[9] However, a *post facto* motion "that the Board of Governors be authorized to inquire of the bar for voluntary contributions to fund [the] program"[10] was passed.

In 1975, the committee reported to the membership that voluntary contributions from the bar amounted to only $3,800,[11] far short of the committee's contemplated minimum funding goal. The committee then recommended that the bar be assessed $10 per year for active attorneys in practice 3 years or more and $6 per year for active attorneys in practice less then 3 years.[12] The recommendation was adopted by a vote of 277 to 112.[13] The fee structure was later changed to $15 per active attorney in practice 2 years and over and $9 per active attorney in practice for less than 2 years. In the meantime, three important changes took place.

First, in December of 1975, the Board of Governors appointed a steering committee to implement the program.[14] Second, a full-time program director was hired.[15]

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[5] Id. at 37-42.

[6] *Transcript of the Business Session of the Thirty-ninth Annual Meeting of the Oregon State Bar* at 159-63.

[7] The organizational chart for the program is set forth below in footnote 20.

[8] *Transcript of Business Session of the Fortieth Annual Meeting of the Oregon State Bar* at 150.

[9] Id. at 161.

[10] Id. at 63.

[11] *Annual Report of the Civil Rights Committee of the Oregon State Bar* (1975) at 32.

[12] Ibid.

[13] *Transcript of the Business Session of the Forty-first Annual Meeting of the Oregon State Bar* at 52.

[14] *Annual Report of the Civil Rights Committee of the Oregon State Bar* (1978) at 80.

[15] Ibid.

Third, the original plan to create a joint-venture minority pre-law program with Portland State was found impractical as a direct result of the university's reluctance to move forward because of a tightening on federal funding disbursements. Coupled with this was the criticism of a small but vocal bar group that affirmative action program monies should be spent to fund minority scholarships rather than to pay for staffing. Accordingly, the affirmative action committee utilized its authority "to make changes and modifications in the program as the need develops." However, the committee decided to postpone formally announcing these changes until a director was appointed. The first program director, Mr. Ronald Finley, began his duties in August of 1976.[16]

In September of 1977, the AAP Committee recommended:

> That the Affirmative Action Plan adopted in 1974 be modified and simplified as follows:
>
> a. That the basic goals of the original plan be retained as follows.
>
> (1) To increase the awareness of all qualified minority students of the possibility of a legal career;
>
> (2) To increase the number of minority students enrolled in pre-law programs and in Oregon's three law schools; and
>
> (3) To increase the number of minority students enrolled in the legal profession, especially in private practice, over the course of the next fifteen years so that such number equitably reflects the proportion of minorities in the overall population of the state.[17]

These modifications were introduced and accepted by the membership at the business session of the 1977 annual meeting.[18] While the program has grown since 1977, its functions have not changed substantially. Thus, in 1982, the jurisdiction of the Affirmative Action Program is as follows:

> To administer and direct the bar's Affirmative Action Program. Its duties include:
>
> . . . . (2) The encouragement of minority participation in the legal profession.
>
> (3) The study of minority interests and continuing legal education programs.[19]

We now turn our attention to the carrying out of the functions of the current program.

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[16] Id. at 80-81.

[17] *1977 Affirmative Action Program Committee* at 24.

[18] *Proceedings of the Forty-third Annual Meeting of the Oregon State Bar*, vol. I, at 81-83.

[19] *Oregon State Bar Reference Manual*, Committee Jurisdiction Statement at 1.

Components of the Oregon State Bar's Affirmative Action Program

The Affirmative Action Program is divided into recruitment, financial aid, statistical gathering and monitoring components. These are discussed below.

Recruitment: The program director visits in-state and out-of-state colleges to recruit and counsel minority students who plan to enroll in law school. The director also visits in-state and out-of-state colleges to educate minority student counselors and pre-law advisors about both the law programs offered at each of the three Oregon law schools and the functions of the Affirmative Action Program. The director then makes available to selected schools the AAP poster entitled "The Oregon State Bar is out to get Minorities . . . through Affirmative Action." The poster comes complete with tear-off sheets which interested staff or students can use to contact the AAP for counseling or further information. Recruitment efforts annually result in contacts with over 250 interested college students.

Working under the assumption that the earlier students are reached in their scholastic careers, the stronger the long-term impression they will retain, the director reserves sufficient monies and travel time for visiting Oregon elementary, junior high, and high schools to speak about the role of the lawyer in this society. The director also explains to interested students how they can prepare themselves for a career in law.

The director further works with a committee of Oregon law students and law school staff to develop and annually present "Minority Law Day." Minority Law Day takes place in mid-October and is a one-day seminar-workshop designed to educate minority pre-law students regarding pre-law preparation, financial aid, the law school experience, and the legal field. As such, the program allows pre-law students to meet with law school faculty and staff, minority law student leaders and Oregon minority attorneys. Among the Law Day's featured guests have been the Honorable Jack Tanner, District Court Judge for the Ninth Federal District; Derrick Bell, Jr., Dean of the University of Oregon School of Law; and Larry Sarjeant, Director of Affirmative Action and Minority Recruitment for the Legal Services Northwest Regional Offices.

As part of the counseling efforts, the director makes information available to pre-law minority students studying for the LSAT. For a $15 refundable deposit, students can have access to a twelve-hour course on LSAT preparation, a course devised for the program by Mary Klepser, Esq. Ms. Klepser is an alumnus of Yale Law School who practices in Portland and has achieved notable success in preparing people to sit for the LSAT examination.

Financial Aid: For the past five years, the AAP has maintained a strict policy of placing most of its funds into financial aid programs directly benefiting minority law students. The 1981 budget allocated $68,200 (60 percent of the total) to this end. The 1982 budget will allocate even more.[20] These funds are apportioned as follows: $33,000 awarded annually in conditional student loans, $7,000 in unconditional bar exam loans, $22,800 in summer clerkship matching grants and $4,700 in grants to law school subsidies.

Conditional student loans are awarded to students attending Oregon law schools. If the student recipient sits for the Oregon bar within one year after graduation, the loan is forgiven. If a student either fails to complete law school or does not sit for the bar by the end of the required period, the loan becomes payable at 10 percent simple interest.

Since the program's inception, $130,000 has been awarded to a total of 62 minority law students through the conditional student loan program.[21] The AAP is currently attempting to solicit $33,000 worth of outside scholarship funds with which to match the bar-funded conditional student loan program. Accordingly, the program has already gained IRS 501(c)(3) approval for a fund known as the Oregon State Bar Minority Scholarship Program, Inc. and has submitted grant requests to charitable foundations on a nationwide basis.

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[20] The AAP budgets for calendar years 1981 and 1982 are as follows:

Revenues	1981 Budgeted	1982 Budgeted
Membership	90,400	95,700
Loan Repayments	7,000	5,800
Interest on Investments	4,300	5,200
Carryover	11,600	8,300
TOTAL	113,300	115,000
Expenditures		
Salaries & Benefits	29,400	32,600
Purchased Services		
Training	-0-	300
Travel & Expense—Staff	3,500	3,500
Dues & Subscriptions	400	400
Loans—Conditional	33,000	33,000
Loans—Unconditional	7,000	7,100
Grants to Law Schools	5,400	5,400
Summer Law Clerk Subs.	22,800	22,800
Other Services	500	600
Publication Purchase	-0-	100
Overhead	3,500	4,000
Emergency Student Loan	-0-	5,000
Subtotal	76,100	82,200
Supplies & Materials		
Supplies—Office	200	200
Unappropriated Expense	7,600	-0-
TOTAL	113,300	115,000

[21] Source: AAP conditional student loan records.

The unconditional bar exam loan program is designed to aid financially needy minority students who are about to sit for the Oregon bar exam. The loan award is based on financial need, the number of loan applicants, and alternative sources of financial aid. The upward limit of an unconditional loan is the total of the bar exam and bar review course fees. So far, the program has loaned $25,000 to a total of 51 eligible students.[22]

The Minority Summer Law Clerk Placement Program places minority law students with Oregon legal employers for summer clerkships. The clerkship program can fund, on a matching salary grant basis, up to one-half of one full-time salary for a limited number of minority law clerks. These grants are offered on a "first come, first serve" basis to eligible employers who have selected a minority law student for employment through this program. The program places minority law students with private law firms and law-related public agencies. This provides job contacts and practical experience for the law students and encourages private law firms to consider minority candidates as ongoing clerks or future associates.

Prospective Oregon lawyer employers are solicited through a winter *Oregon Bar Bulletin* announcement and an all-bar direct mailing. The AAP then publishes a directory of prospective employers which is distributed to student participants. Last summer 21 such students were placed through the program. Overall, the program has been placing minority law students in clerkship jobs since 1975.[23]

The program of grants to law schools annually makes $4,700 available to Oregon law schools for programs specifically designed to insure the success of minority students. AAP law school grant money has been awarded to the Lewis & Clark Law School for the Summer Institute;[24] to Willamette College of Law for their minority student program;[25] and to the University of Oregon School of Law for their minority student tutorial program.[26]

In 1982, the AAP launched its $5,000 Student Emergency Loan Fund. The fund is designed to supplement the emergency student loan programs of the three Oregon law schools and to loan money to minority students for "unforeseen emergencies."[27]

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[22] Source: AAP bar exam loan records.

[23] Source: AAP summer clerkship program records.

[24] The Lewis and Clark Summer Law Institute is an intensive six-week program held during the summer prior to the first semester of the student's first year. It is designed to introduce students to basic legal concepts, legal reasoning and study methods.

[25] The Willamette College of Law Minority Program is a first year law tutorial program for any minority student whose PFYA indicates that she/he could value from the program.

[26] The University of Oregon's Minority Student Tutorial Program is an academic support program for students who appear most in need of academic assistance during their first year in law school. The program includes instruction in legal reasoning, development of analytical skills and exam writing practice.

[27] "Unforeseen emergency" is defined as "situations involving death in the immediate

Statistical Gathering/Monitoring and Other Programs: The program director keeps track of the numbers of minority student applicants sitting for and passing the Oregon bar exam each year and compares this with the overall bar passage rate.

The program annually distributes the Law School Reporting Guide (LSRG), a questionnaire, to each of the three Oregon law schools for completion. The questions presented seek information on the law schools' programs for minority students, the admissions process, financial aid, and basic enrollment statistics. Completed LSRG forms enable AAP recruiter/counselors to have an enlightened perspective on the student body and programs found at the Oregon law schools. The LSRG also allows the affirmative action committee to monitor the impact that the program is having upon the law schools, especially in minority enrollment statistics and student success rates.

The AAP director acts as liaison between minority law students and law school administrators when necessary and is available as a consultant to minority law student associations and administrators alike. The program director is further available to counsel minority law students, hear their grievances and, if necessary, work out a solution at the bar committee level.[28]

In 1977, Carol Hewitt, a member of the program committee, was a program planner for an Oregon bar-sponsored continuing legal education program on discrimination law. In the spring of 1981, Program Director Angel Lopez co-planned an updated seminar with Ms. Hewitt entitled "Employment Discrimination Law." The purpose of both programs was to educate the bar regarding an area of law that very much affects the lives of the minority community.

Conclusion

The efficacy of the Oregon Affirmative Action Program is documented by both the increased numbers and percentages of minority practitioners and law students in the state since the program's inception. The number of practicing minority lawyers has increased four-fold since 1975, and the percentage of law students has increased from 4.54 to 7.09 between 1974 and 1982. Thus, the statistics, both in

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family, personal medical expenses not covered by the students health insurance policy and education related expenses unanticipated at the time the student applied or could have applied for financial aid through the law school."

[28] The AAP Committee meets regularly at each of the three Oregon law schools. The committee is composed of 9 attorneys (appointed by the Board of Governors); 6 law student representatives (3 regulars and 3 alternates, both appointed by their respective law school deans); 3 community-at-large members (appointed by the committee); and each of the 3 law school deans. Terms of office are: attorneys—3 years, staggered terms; law students and community-at-large—one-year terms; deans—ongoing membership.

terms of minority law student population and bar membership, are inspiring.[29] The past and indicated future successes of the AAP are in large part due to the following:

1. The AAP has a minimum guaranteed source of income from earmarked mandatory bar dues. It is not, therefore, subject to fiscal crisis at either the state or federal government levels.

2. The fact that there are three law schools in Oregon and that none is located further than 110 miles from the Affirmative Action Office makes it feasible for the program director to be in constant communication with the students and administration at these schools.

3. The fact that law school administrators, students and Oregon attorneys and residents have input into the program through the AAP Steering Committee structure insures that the program remains responsive to the changing needs of the Oregon minority law student community.

4. Notions that the time for programs such as the AAP has passed hold little weight. The number of minorities in the legal profession both in Oregon and nationwide is still far from parity with either that of white males or white females.[30] There is still the need for, and the bar still has a responsibility to give assistance to the members of the minority community who seek entry into the legal system. It is only through the legal system that the chains of extreme poverty and oppression associated with ghetto, barrio, and Indian reservation can be broken.

Again, the impetus toward defederalism and the push toward greater local control further bolster the idea that if adequate minority representation is ever to become a reality, that reality must begin at the local level. Oregon's Affirmative Action Program serves as a paradigm for other states, including state and local bar associations.

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[29] The number of minority Oregon law students and attorneys has increased from 1974 as follows:

Year	Number of Students	Percentage Oregon Law Student Population	Year	Oregon Minority Atty. Pop.	Total Oregon Atty. Pop.
1974-75	70	4.54	1974	19	4357
1975-76	68	4.31	1975	30	4655
1976-77	68	4.27	1976	41	5062
1977-78	85	4.47	1977	47	5500
1978-79	109	7.53	1978	57	6189
1979-80	121	7.29	1979	67	6636
1980-81	121	7.45	1980	75	7020
1981-82	117	7.09	1981	92	7340

[30] In the 1980-81 academic year, 971 white male, 554 women and 121 minority students enrolled in Oregon law schools. Nationally, 72,701 white males, 42,122 women and 10,574 minorities enrolled in ABA-accredited law schools in the 1980-81 academic year. Source: *A Review of Legal Education in the United States—Fall 1980-81*, published by the American Bar Association Section of Legal Education and Admissions to the Bar.

CHAPTER V
AN EXEMPLARY RETENTIVE MODEL: THE PROFESSIONAL DEVELOPMENT PROGRAM*

Introduction

As more minority students have gained access to colleges and professional schools, with attendant disproportionate attrition rates in some institutions, the retention of minority students has become an increasingly important issue. However, the majority of retention programs that have been instituted are remedial in nature, and their success, in many instances, has been minimal. A notable exception to this, in terms of both focus and result, is the Professional Development Program at the University of California, Berkeley. Since its commencement, the Professional Development Program (PDP) has garnered an impressive record of academic achievement among its participants, many of whom entered with SAT scores that were thought to signal scholastic difficulties. To the contrary, however, students participating in PDP have consistently outperformed peers, both minority and, in most instances, non-minority, and have in many cases established an inverse relationship between their SAT scores and university grade point averages.

History of the Program

In 1964, the University of California Academic Senate, Berkeley Division, established its Special Scholarship Committee with a mandate to increase opportunities for minority students in the university. In 1974, after a decade of work, the Committee turned its attention to the severe underrepresentation of minorities and women in mathematics-related professions, creating the Professional Development Program to address this problem.[1]

The undergraduate-level mathematics and science intervention strategy developed by the PDP, which has since been expanded to include undegraduate writing workshops and research placements, successfully addresses the problems of retaining previously highly successful minority students in their initial years of rigorous college work. These problems are analogous to those faced by minority students in their first years in professional studies, such as law school. Common problems which affect formerly high achieving minority students enrolled in competitive programs in math and science or legal studies include: learning a new professional language; student insularity; the lack of minority professors and mentors; and student alienation.

In this profile, we describe the undergraduate-level mathematics and science intervention strategy developed by the Professional Development Program in hopes that it may serve as a model of retention for law schools.[2] The mathematics/science workshop described here is a nonremedial intervention program that has increased the mean grade point average of its enrollees one full grade in some courses and facilitated the completion of certain others by minority students—courses in which these students had been experiencing an attrition rate of 25 percent or higher.

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* This project is currently conducted jointly with the Student Learning Center of the University of California, Berkeley.

[1] Katharyn Culler, *Helping Minority Students to Excel in University-Level Mathematics and Science Courses — The Professional Development Program at the University of California, Berkeley*, p. 1

The PDP staff perceived Berkeley's demanding one-year calculus sequence as a particularly significant barrier to previously successful minority students. This series (Math 1A, 1B, 1C) represents the first year of a two-year mathematics sequence that plays a pivotal role in the career aspirations of all science and engineering students. It is a prerequisite for all engineering and physical science majors and the preferred calculus sequence for business administration, computer science and biological science majors. Data established that in every year prior to the creation of the PDP mathematics/science workshop in 1978, the average grade of black and Chicano students was below the class average and, in many years, below the university's minimally acceptable scholarship level as well. Equally important was the fact that more than one-fourth of the minority students who attempted Math 1A during these years dropped the class before completing it and, thus, did not earn a grade. Many left the university altogether having failed in the sequence of mathematics classes.[3]

Minority students were failing, in part, because they entered Berkeley with less exposure to rigorous mathematics than most of their classmates, even though they had been outstanding students in their high schools. Additionally, some entered with seriously deficient study skills. Moreover, because of inexperience in diagnosing their own academic problems, these students did not use study time effectively, whether alone or with a tutor. Hence, minority students failed with alarming, but not surprising, regularity.

Unlike their majority counterparts, minority students rarely socialized or studied with their classmates. This insularity, the PDP staff contends, hinders these students' academic success. The staff perceived that the informal study groups common among majority students serve as vehicles for academic socialization, since the study groups enable students both to better their understanding of university and class requirements and to acclimate their attitudes and behavior. Composed of students with a common purpose, these groups can be efficient mechanisms for gathering the institutional and scholastic knowledge necessary for academic success. Study groups are also significant in that they provide an important source of encouragement and emotional support in a period of difficult personal adjustment for all students.

Prior to the establishment of PDP, the University of California at Berkeley (hereinafter Berkeley), like many other schools, provided students with academic and personal support services such as counseling, faculty advising and remedial tutoring. However minority students often misunderstood the purpose of these services. For many high achieving minority students remediation is contrary to their self-perception. These students associate remediation with the nonserious student or with the discipline problem. The misconceptions of students joined with the inexperience of faculty and staff in working with minority students resulted in frustrating experiences for minority students who sought help.[4]

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[2] The American Bar Association Section of Legal Education and Admissions to the Bar reports in its *A Review of Legal Education in The United States* (Fall 1978), (Fall 1979), and (Fall 1980) that minority attrition between the first and third years in ABA-approved law schools was 21 percent, double that of majority students.

[3] *The Mathematics/Science Workshop: A Progress Report*, (The Professional Development Program, Nov. 1981) p.3.

A comprehensive view of the minority freshmen at Berkeley indicated that multiple, innovative techniques were required to improve these students' performance and persistence in mathematics-related courses. The PDP staff felt that an effective intervention strategy must focus not only on mathematics learning per se, but also on the range of the problems that minority freshmen face at Berkeley.

PDP Strategy and Pilot Intervention Program

The PDP strategy and the operational math/science intervention program based on the strategy are premised on four distinct components which are described below. It is important to emphasize that the program, as it operates, is both highly effective and cost efficient, in that students themselves assume the instructional role. Group instruction is carried out for 5 to 7½ hours per week guided by a mathematics education specialist and for 5 to 7½ hours per week guided by the students themselves. The ultimate goal of the PDP is to produce high achieving, independent learners who can function within the mainstream of university life well beyond their sophomore year.[5]

The math/science workshop serves four functions, which are set forth as follows with their corresponding activities:

1. *Building a community of minority freshmen that is focused on academic excellence and is source of peer support.*

In the workshop, students are immersed in extremely structured, intensive group activities. Study groups are formed before classes begin, giving students time to know each other and to learn how to work together before they are beset by the pressures of the academic term. Fifteen hours per week of group activities are allocated for participants, allowing time for both academic and social interactions.

Workshop staff members facilitate participants' learning from their study groups those ingredients essential for academic success. These ingredients range from a knowledge of how to maneuver within the institutional "system" to a command of specific concepts in a course. Individual study groups are organized to account for differences in ethnicity, economic class and preparatory academic background, so as to maximize the benefit to each participating student.

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[4] *Helping Minority Students to Excel*, p. 3.

[5] Philip Uri Treisman, *Improving the Performance of Minority Students in University Mathematics: A College-Level Intervention Strategy*, pp.7-8.

The singularly most important feature of the workshop is its nonremedial emphasis. Indeed, PDP is conceived and conducted as an honors program.[6] This is made possible by carefully placing students in courses for which they have adequate prerequisites. In this way, the workshop maintains an atmosphere of high academic achievement and excellence. When a student needs remedial study, the workshop arranges for individual study sessions, often in conjunction with one of the regular campus programs available for such service.

2. *Providing minority students with an extensive orientation to the University with continued academic counseling.*

The math/science workshop assists students to perceive the norms, demands and requirements of the institution. During their first week on campus and before the academic term begins, each student is interviewed in depth and given an appropriate mathematics screening test. In the initial orientation sessions and interview, students are told how their academic preparation compares with that of their classmates, minority and non-minority, and what will be expected of them in courses: *e.g.*, number of hours of weekly study in each course and standards for homework. On the basis of these contacts, each student is assisted in designing an appropriate academic plan for his/her freshman year. Each student is also introduced to a sophomore student who will both monitor the freshman student's progress and serve as a "buddy".

During the academic year, workshop staff members serve as informal advisors. They are in almost daily contact with the workshop students and are trained to recognize common problems that interfere with the students' success. Students with potentially serious problems are referred to the workshop's coordinators or directors. When necessary, these individuals refer students to a campus counseling center or Educational Opportunity Program specialist who has been assigned to work with workshop students.

3. *Monitoring students' academic progress and their adjustment to the University environment and advocating students' collective and individual interests.*

The staff scrupulously follows students' progress and performance. They continually review homework and test scores and students' understanding of important mathematical concepts. This monitoring is important because it enables the staff to identify and deal with problems quickly. Monitoring is, thus, closely tied to the workshop's orientation, counseling and instructional activities. Additionally, the staff advocates on behalf of students and the workshop community. They facilitate resolution of participants' problems and have established formal ties between PDP and the campus academic and administrative retention units. Key individuals in these other campus units offer special assistance to workshop participants.

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[6] According to Philip Uri Treisman, Assistant Director of PDP, the characterization of PDP as an honors program is accurate in that students from minority backgrounds who are admitted to Berkeley have already demonstrated exceptional intellectual capacity and scholarship potential; thus, they are capable of and should be expected to perform top caliber work within the university. The same high expectations should extend, by analogy, to disadvantaged and minority students who, against all odds, have succeeded in gaining admission to ABA-approved law schools.

4. *Providing minority freshmen with extensive and continual supplementary instruction.*

The math/science workshop uses a variety of special formats developed by the PDP staff to provide students with both supplementary mathematics instruction and general instruction in three target skills:

(a) reading the technical language in which university mathematics texts are written;

(b) writing homework, tests and laboratory assignments in standard mathematical language and form; and

(c) accurately assessing the extent of one's understanding of mathematical concepts and problems.

The workshop instructors have advanced graduate training in mathematics or science, experience in teaching at the university level and experience in working with minority students. Many of these instructors are graduate students in Berkeley's Ph.D. program in science and mathematics education; others have worked in projects such as the Community Teaching Fellow Program.

The ultimate goal of the math/science workshop is to assist participating students in developing into independent learners. As independent learners, students will be able to excel academically and socially beyond their sophomore year. With this goal in mind, workshop leaders encourage and guide students in their academic work as well as in their interactions with faculty, teaching assistants and academic peers.[7]

Selected Data

Data demonstrate that in the four years that the math/science workshop has been in operation, it has been highly successful in meeting its goals. Workshop students have consistently outperformed their non-workshop minority counterparts in each of the project's target courses. Moreover, in many of these courses, the average grade of workshop participants has equalled or surpassed that of their non-minority classmates.

In the following tables, black and Chicano workshop freshmen are compared with non-workshop freshmen in Berkeley's Math 1A and 1B. As the charts show, in the five years prior to the creation of the workshop, the average Math 1A grade earned by black and Chicano students was between D+ and C−; the class average for all students during this time was between C+ and B−, a full grade higher. In contrast, the average grade earned by workshop participants was between B− and A−, significantly higher than non-workshop students, both minority and non-minority. (*See* Appendix A to this chapter, Tables I, Ia, Ib and Ic).

Nor can it be said that PDP selects only the most highly qualified students to participate in the program. Data indicate that the predictive indices of participants, in terms of their mathematics SAT scores, are actually lower than those of minority non-participants, while their performance, on average, is considerably higher. (*See* Appendix B to this chapter, Table IIa).

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[7] *Improving The Performance of Minority Students in University Mathematics*, pp.6-8.

Conclusion

The Professional Development Program at Berkeley has achieved remarkable success in ensuring both higher levels of academic performance and continued persistence among its math/science workshop participants. In its fourth year of operation (1981-1982), it served more than 200 students, as contrasted with the initial 44 students enrolled in the program.[8]

By assessing the problems that minorities confront when entering a rigorous but alien academic program and by addressing those problems intelligently and forthrightly, PDP has achieved notable success.

As the preceding discussion and attached appendices indicate, black and Chicano participants have not only outperformed non-workshop minorities, but have paralleled or surpassed the performance of non-minority peers. Due to the excellence of the PDP experience at Berkeley, other universities, notably UCLA and the University of California at San Diego, are in the process of establishing prototype programs based on the PDP.[9] Moreover, the PDP strategy has already been extended to graduate and high school outreach programs at U.C. Berkeley.[10]

PDP's honors strategy serves as a model for law school retention programs. It is premised on the belief that disadvantaged minority students who have been admitted to U.C. Berkeley's rigorous mathematics and science program are individuals who should be expected to excel at a high level. Through intensive workshop activities consisting of group study, advising, advocacy on behalf of the participants and supplementary instruction, minority students in PDP have begun to realize their academic potential and independence as learners.

As casual observers to the PDP workshop, staff members from MALDEF's Program for Access to the Legal Profession were impressed with the degree of enthusiasm, self-motivation, autonomous learning and confidence shown by minority students in dealing with formidable subject matters in higher mathematics and science. It is suggested that this same demanding yet supportive strategy be instituted to assist minority law students; the self-fulfilling prophecy that law schools communicate to their minority students need not be one of lowered expectations, but rather one of excellence tempered with intelligent strategies to meet any skill deficiencies or social adjustments.

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[8] *The Mathematics/Science Workshop: A Progress Report*, p. 2.

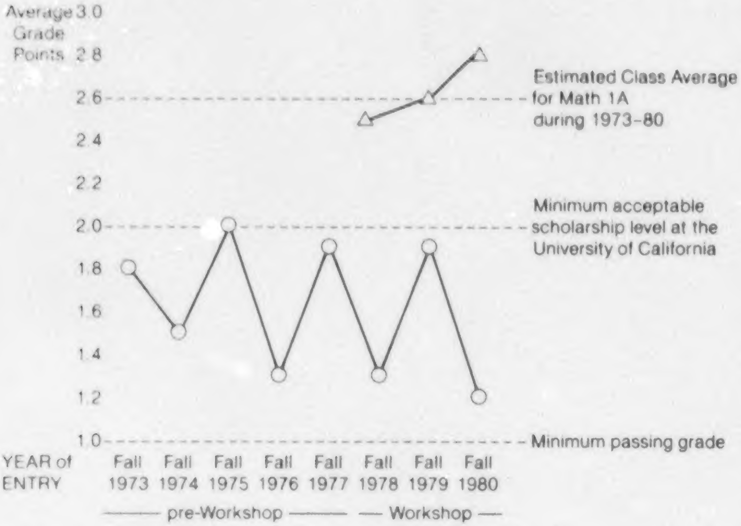
[9] Id. at 19.

[10] *Improving The Performance of Minority Students in University Mathematics*, p. 1.

APPENDIX A

Table 1A

Peformance of Black Freshmen in Math 1A, by Year of Entry into the University



NUMBER OF

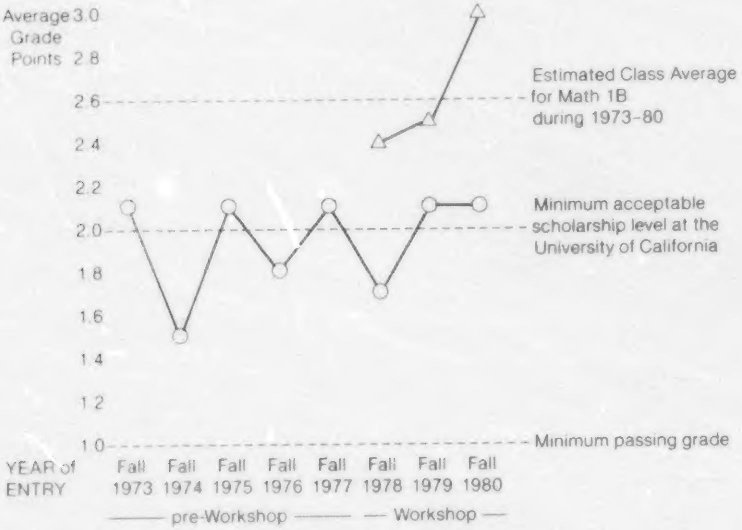
YEAR	1973	1974	1975	1976	1977	1978	1979	1980
Workshop Students	—	—	—	—	—	25	29	38
Non-Workshop Students	16	20	27	30	38	30	26	35

△ = Workshop Participants
○ = Non-Workshop Students

Average Math SAT score of Black Workshop Students in Math 1A during 1978-80 was 494.
Average Math SAT score of Black Non-Workshop Students in Math 1A during 1973-80 was 498.

Table 1B

Peformance of Black Freshmen in Math 1B, by Year of Entry into the University



NUMBER OF

YEAR	1973	1974	1975	1976	1977	1978	1979	1980
Workshop Students	—	—	—	—	—	24	24	30
Non-Workshop Students	9	15	20	19	22	14	18	11

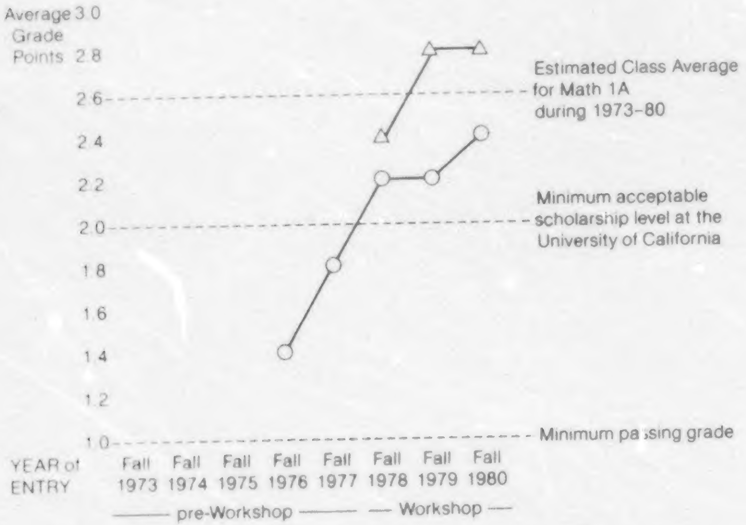
△ = Workshop Participants

○ = Non-Workshop Students

Average Math SAT score of Black Workshop Students in Math 1B during 1978–80 was 529.
Average Math SAT score of Black Non-Workshop Students in Math 1B during 1973–80 was 544.

Table 1C

Peformance of Chicano Freshmen in Math 1A, by Year of Entry into the University



NUMBER OF

YEAR	1973	1974	1975	1976	1977	1978	1979	1980
Workshop Students	—	—	—	—	—	8	7	22
Non-Workshop Students	—	—	—	15	15	27	20	24

△ = Workshop Participants

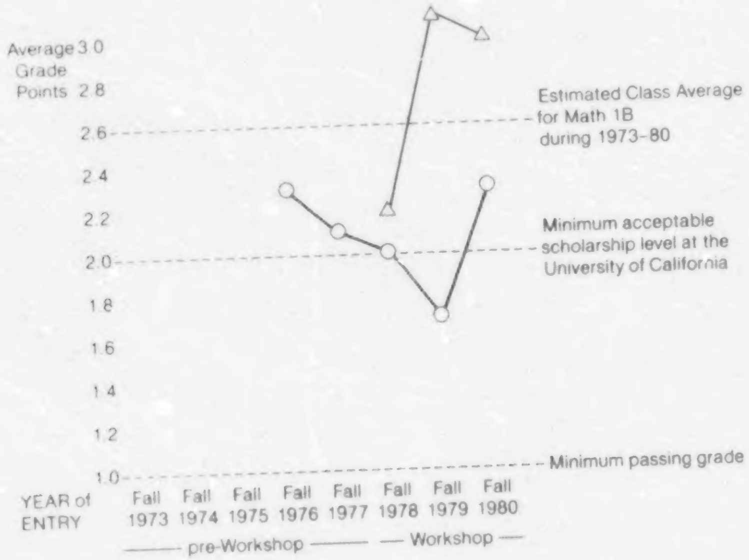
○ = Non-Workshop Students

Average Math SAT score of Chicano Workshop Students in Math 1A during 1978–80 was 526.

Average Math SAT score of Chicano Non-Workshop Students in Math 1A during 1976–80 was 567.

Table 1D

Peformance of Chicano Freshmen in Math 1B, by Year of Entry into the University



NUMBER OF

YEAR	1973	1974	1975	1976	1977	1978	1979	1980
Workshop Students	—	—	—	—	—	7	6	16
Non-Workshop Students	—	—	—	7	8	17	13	18

△ = Workshop Participants
○ = Non-Workshop Students

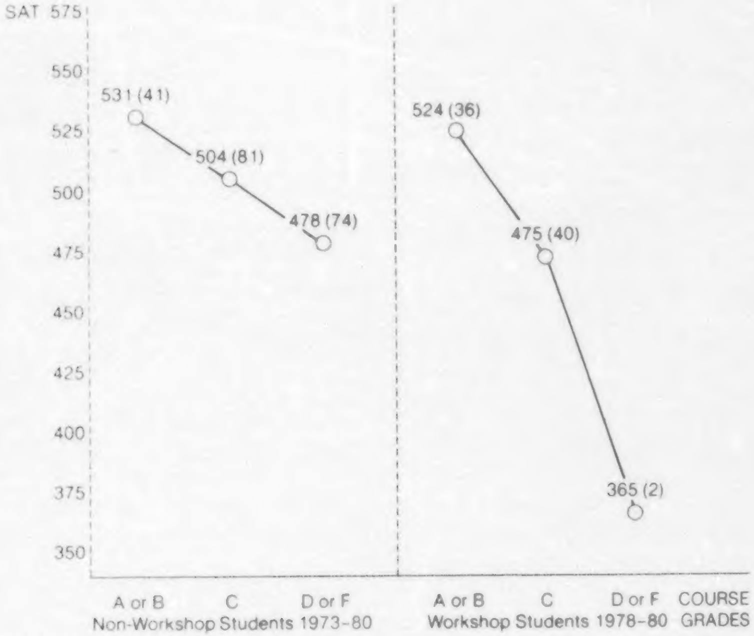
Average Math SAT score of Chicano Workshop Students in Math 1B during 1978–80 was 559.
Average Math SAT score of Chicano Non-Workshop Students in Math 1B during 1976–80 was 572.

APPENDIX B

Table IIa — Math 1A

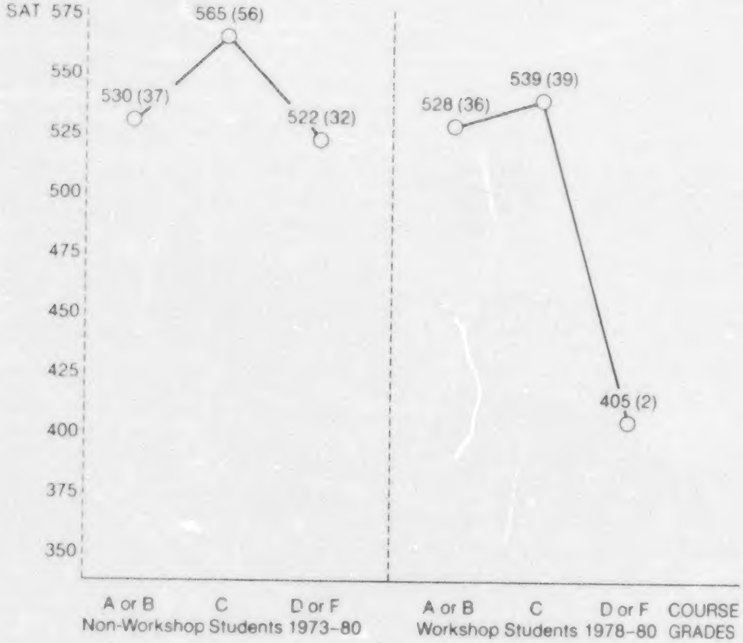
Comparison of Average Math SAT Scores With Grades in Math 1A/1B Among Black Freshmen

Numbers in parentheses show total number of students having the indicated grades.*



*For example, 41 students received an A or B in MATH 1A, and their average Math SAT score was 531. All students whose SAT scores are in University records are included.
Source: The Mathematics/Science Workshop: A Progress Report (November, 1981).

Table 11b — Math 1B



CHAPTER VI
MALDEF'S PROGRAM FOR ACCESS TO THE LEGAL PROFESSION: Questionnaire Analysis

Introduction

An integral part of MALDEF's Law School Access Study involved obtaining accurate information on current admissions procedures in ABA-approved law schools throughout the nation. Formal information was solicited by means of a 13-page questionnaire that was distributed to all of the 171 ABA-approved law schools in the United States. A copy of the questionnaire appears in the appendix.

Before distribution, the questionnaire was reviewed by an independent sociologist who certified that it conformed with established procedures and practices of survey methodology. Most of the questions had been used in an earlier survey of California law schools (*see* Brown and Marenco, 1980). In addition, the questionnaire was pre-tested at three ABA-approved law schools [1] and, following the pre-test, was again reviewed and minor revisions were made. Finally, the questionnaire was mailed to the deans of all 171 ABA-approved law schools in the United States, including Puerto Rico.

A cover letter containing instructions and definitions relevant to completion of the questionnaire was included with each one. Moreover, the cover letter stated that MALDEF personnel, as well as several deans serving on the Advisory Committee of the Law School Admissions Study, were available at all times to answer questions or to clarify items in the survey. Respondents were assured that all information provided would be held confidential and that nowhere in the analysis would we identify a school by name. This notwithstanding, we were unable to obtain complete information for several items.

Following our initial contacts with the law schools, where necessary, MALDEF staff followed up with letters and telephone calls. Although the questionnaires were often completed by directors of admissions or assistants to the dean, in all cases the dean of each law school assumed responsibility for the accuracy and completeness of the information provided.

Fifty-six of the 171 questionnaires, or 33 percent, were completed and returned, which is a higher than normal return rate for mail surveys. All of these fifty-six are included in the analysis. There is no reason to believe that our sample is not representative of the total number of ABA-approved law schools in the country since it includes both private and public, large and small, and prestigious and lesser-known schools. In other words, we believe that our findings apply to all ABA-approved law schools in the United States.

The analysis was undertaken in two stages, by the same independent sociologist who reviewed the questionnaire before its distribution. In the first stage, the data were tabulated and summarized. The second stage involved a more thorough and detailed analysis in which trends and patterns were highlighted using both statistical and descriptive methodologies. We present our findings in the following six sections, paralleling the questionnaire format and the analysis we reported for the California law schools in Brown and Marenco (Chapter IV, 1980).

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[1] The questionnaire was pretested at the University of California, Davis, School of Law, Catholic University School of Law, and De Paul University, School of Law.

Major Findings

The major trends apparent in the survey material included the following.

1. Most schools had only one admissions committee, composed primarily of faculty selected by the dean of the law school. In cases where there was a second committee, it served in an advisory capacity only. Although 17 percent of committee members were students, for the most part they did not vote.

2. Admissions procedures, policies, and criteria seemed to be fairly consistent across all the law schools. We found little variation in structure, role, and procedures employed by admissions committees and in the weights assigned to various criteria (*e.g.*, GPA, LSAT, and noncognitive factors) in the evaluation of applicants.

3. Noncognitive factors (*e.g.*, sex, age, race, ethnicity, etc.) were evaluated primarily for students not admitted on the basis of GPA and LSAT scores. Many of these students were minority applicants.

4. Only 31 percent of the schools indicated that they had separate recruitment programs for regular and "special" applicants; yet, in 65 percent of the schools, minority students were actively involved in recruitment.

5. Thirty-four percent of the schools offered some form of academic support services for all students, while 45 percent offered such services primarily for "special" students. In addition, about half (52 percent) of the schools indicated that they had funds reserved for "special" students who required financial assistance.

6. Although the percent of minority student enrollment doubled (from 4 to 8 percent) during the 1970s, minorities continued to be greatly underrepresented in American law schools. In fact, at the present rate of increase, it will take approximately 60 years for minorities to be equitably represented in law schools, that is, in proportion with their numbers in the larger population.

7. For the most part, the screening and review process did not differ for regular and "special" applicants.

8. Although minority bar passage rates are lower than those of white students, only one school indicated that it was affiliated with a minority bar passage program supplementary to commercial bar courses.

9. Although in many areas the findings for the national sample did not differ from those reported by Brown and Marenco (1980) for California, in general it appears that California does more for minorities than the national average.

10. Many schools are not doing anything special for minority students, treating minority applicants as part of the general pool of applicants and when admitted as students, as part of the general student body.

Detailed Analysis

Admissions Committee

Most law schools (79 percent) had only one admissions committee, composed primarily of faculty members. A substantial number (19 percent), however, indicated that they had two committees that were responsible for admissions. [2] Although many schools had a second committee, in all cases the first had the power to admit students and the second served only as an advisory body, often advising specifically on minority candidates. The committees were composed of 68 percent faculty, 15 percent administrators, and 17 percent students and ranged in size anywhere from 3 to 15 members, depending on the school. Generally, committee members were appointed by the dean of the law school; this was the case in 81 percent of the schools. While other administrators and faculty were often involved in the selection of committee members, students were almost never involved at this stage.

In 79 percent of the schools, each member of the admissions committee had an equal vote. In schools where students sat on the admissions committee, they generally did not vote. In a few schools, the assistant registrar who sat on the committee also did not vote. In addition, several schools noted that the dean's vote could count more since he had the final power to admit or reject an applicant. Although the great majority (89 percent) of the schools stated that tie votes and/or lack of consensus seldom occurred, in the few cases where lack of consensus did occur, decisions were reached in one the following ways:

- the chairman of the committee made the decision;
- a decision was reached through further discussion of the candidate's file;
- the dean made the final decision; and
- a second committee reviewed the file and made a recommendation to the dean.

Four of the schools required a unanimous vote by the committee in order for an applicant to be accepted. Most (83 percent), however, required only majority approval.

Applicant Review Process

Seventy-nine percent of the schools reported using a specific GPA/LSAT predictive index to evaluate applicants, with the LSAT score carrying the most weight (anywhere from 40 to 75 percent, depending on the school). In 94 percent of the schools each candidate's GPA/LSAT index was evaluated upon initial review of the file. Yet, 94 percent of the schools also noted that they did not reject applicants with LSAT scores below a specified minimum, while 6 percent did. As stated in Brown and Marenco (1980), given our experience on, and knowledge of, university admissions committees, we note that in almost all cases minimum scores are established, formally or informally, during the review process. Thus, we wonder about the large percentage of law schools reporting that they do not reject applicants with LSAT scores below a specified minimum.

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[2] Only one school noted that it had three admissions committees. The first committee, however, had the power to admit students while the other two served only in advisory capacities.

Sixty-two percent of the schools indicated that they have "automatic" or "administrative" admissions based on applicants' GPA/LSAT indices, while 38 percent reported that they do not. These figures, incidentally, are identical to those reported by Brown and Marenco (1980) for California law schools. On the average, about 52 percent of each entering class is admitted automatically, with a range of from 15 to 80 percent depending on the school. Most schools (88 percent) have a discretionary admissions policy that evaluates more than the GPA/LSAT index for "special" or "diverse" applicants, while only 12 percent indicated that they do not have such an option. On the average, about 44 percent of each entering class is admitted through discretionary admissions policies, with a range of from 50 to 80 percent depending on the school.

It appears that admissions committees take into account a wide variety of noncognitive factors in making admissions decisions for both regular and "special" applicants. When we asked respondents to check from a list of noncognitive characteristics that entered into their decisions, we obtained the results presented in Table 1.

Overall, the majority of students (62 percent) are evaluated to some extent according to the criteria listed in Table I. For the most part, students who are admitted through the "automatic" admissions policy based on the GPA/LSAT index are not evaluated on noncognitive characteristics. Interestingly enough, the rank order of the noncognitive characteristics for the national sample did not vary much from the sample of California schools reported in Brown and Marenco (1980). Religion, parental education, segregated housing, etc., were toward the bottom of the list while employment, leadership, race, etc., were found toward the top.

Finally, 58 percent of the law schools reported that they do not interview any applicants. Some schools, however, make an effort to interview a large proportion of both regular and "special" applicants. Overall, about 19 percent of "special" and 23 percent of regular applicants are interviewed. Some of these interviews are conducted by telephone. Many schools stated that interviews were not required and that they were unfair to applicants who could not afford the trip. Yet most law schools were willing to interview any applicant who requested it.

Recruitment and Support Programs

Recruitment funds earmarked for "special" recruitment ranged anywhere from zero to 90 percent of the annual recruitment budget. Most schools (69 percent), however, indicated that they did not have separate recruitment programs for regular and "special" applicants, while 31 percent did have separate programs. Although in 65 percent of the schools minority students were actively involved in recruitment, only in 31 percent did they have a "significant" influence on recruitment policy.

Thirty-four percent of the schools offered some form of academic support services for all students, while 45 percent offered such services primarily for "special" students. We note, however, that the academic support services ranged from short orientation programs preceding the first day of classes to more comprehensive courses that continued for the duration of the law school program, including assistance in preparation for the state bar examination. A substantial

Table 1: Noncognitive Characteristics That Enter Into Admissions Decisions

Characteristics	Number	Percentage
Employment after college	48	92
Letters of recommendation	48	92
Race	45	86
Demonstrated leadership	45	86
Demonstrated community service	43	83
Employment during college	43	83
Graduate study	43	83
Handicap	41	79
Socioeconomic status	38	73
Ethnicity	37	71
Geographical location	32	62
Bilingualism	28	54
Age	27	52
Segregated schooling	26	50
Rurality	24	46
Sex	16	31
Segregated housing	16	31
Parents or relatives alumni	13	25
Parental education	11	21
Parents or relatives donors	8	15
Religion	3	6
Other (e.g., travel, quality of undergraduate education, any information submitted, etc.)	24	46

number of schools (21 percent) indicated that they do not provide such services for any of their students. Overall, in the schools where these services were offered, the participation of students was mostly on a voluntary basis.

We found little variation in the support services available. Fifty-six percent of the schools reported that they used student tutors and 42 percent reported using faculty tutors. Sixty-nine percent of the schools taught writing skills, 67 percent taught study skills, and 63 percent taught test-taking skills. Other types of assistance included:

- review sessions;
- discussion groups; and
- help with nonacademic problems.

Finally, 52 percent of the schools indicated that they had funds reserved for "special" students who required financial assistance, while 48 percent did not have such funds. These budgets ranged from $30,000 to $270,000 and were distributed as tuition fees, grants, and emergency loans.

Admissions Data

The percent of minority student enrollment (Hispanic, black, Asian American, and other) doubled during the 1970s. Minorities made steady increases in enrollment from 4 percent in 1970-71 to 8 percent in 1981-82, as illustrated in Figure I. Note, however, that minorities are still greatly underrepresented in American law schools. In fact, the proportion of minority students in ABA-approved law schools would have to triple before minorities would be represented in proportion with their numbers in the general U.S. population. At the present rate of increase, four percentage points every 11 years, it will take 44 years (the year 2026) before minorities can expect to be represented in proportion with their numbers in the general population.[3] To say the least, this is a long time to wait for equal educational opportunity. Note also that during the 1970s even the highest proportion (8 percent) of minority enrollment in U.S. law schools was lower than the lowest proportion (11 percent) of minority enrollment in California law schools (Brown and Marenco, 1980). The proportion of minority students in California law schools in any one year during the 1970s was twice the national average.

The increase from 4 to 8 percent in minority enrollment during the 1970s is somewhat deceiving in terms of actual numbers. While we did find a small increase in the actual number of minority students, we also found a decrease in the total number of students in law school during the past decade. Thus, the "increase" in the proportion comes primarily as a result of the decrease in the denominator, the total number of students enrolled each year. Finally, with the exception of Native Americans (listed in the category "other"), the proportion of Hispanics, blacks, and Asian Americans remained fairly constant during the 1970s.

About one in two of regular applicants is admitted to ABA-approved law schools in the United States, while only about one in four of "special" applicants is admitted. As is generally known, minority applicants tend to have lower LSAT and GPA scores than white students. This was substantiated by our study, although the response rate for the item inquiring about LSAT and GPA scores for regular and "special" applicants was left blank by most schools.

Policy Considerations

Although a wide variety of institutional objectives reflected in admission policies were listed by the schools, the trends that emerged in these objectives included:

- training lawyers who could respond to all groups in society;
- preparing students who have a high probability for success;

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[3] Given the fact that the proportion of minority population is increasing, a more accurate prediction would be approximately 60 years. Also, given the present conservative political trend and the cutbacks in financial assistance for students, we might even expect a decrease in the proportion of minority students in law schools as well as other graduate and professional programs.

- having a diverse student body; and
- preparing students to pass the bar and practice law.

Almost all of the schools (91 percent) said that they published their institutional objectives, while four schools noted that they did not.[4] Most of the schools published them in administrative bulletins and/or their catalogues.

In terms of the screening and review process, the most common procedure is one where a single individual reviews all of the files and sorts them into three categories:

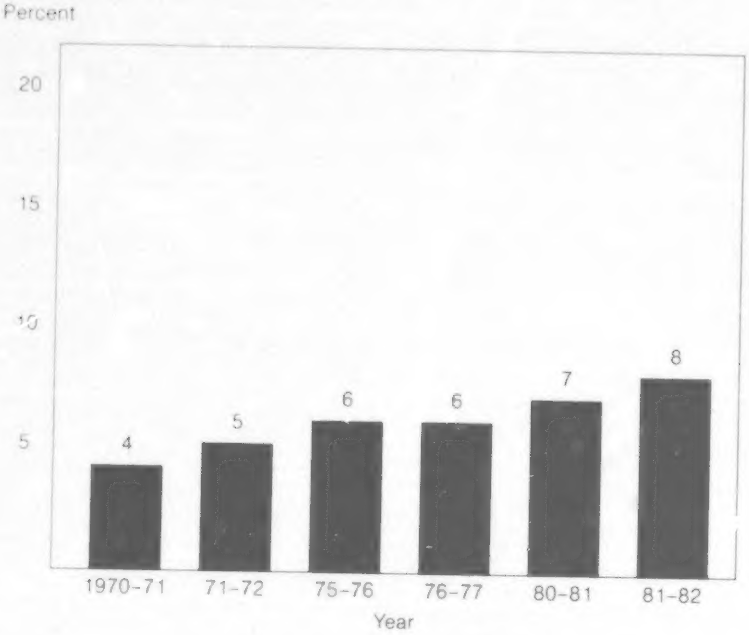
(1) automatic admittance;

(2) review by the admissions committee (includes files of "special" applicants); and

(3) rejections.

Figure 1

Percent Minority Enrollment in ABA-Approved Law Schools in the U.S., 1970-1971 to 1981-1982



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4 Many of the schools submitted printed copies of their institutional objectives with the questionnaires.

Except for the fact that race and ethnicity became two of the noncognitive factors evaluated for students who did not meet the requirements for automatic admittance, for the most part, the screening and review process did not differ for regular and "special" applicants. In other words, it appears that minority applicants, for the most part, are not given special consideration. These applicants simply become part of the group that is neither automatically admitted or rejected. As noted in Brown and Marenco (1980) this type of procedure may have a deleterious effect on minority enrollment. Finally, with the exception of changes required to accommodate the new LSAT scoring method, all schools indicated that they did not plan any revisions in their admissions policies for the near future.

Bar Passage

Only one school indicated that it was affiliated with a minority bar passage program supplementary to commercial bar courses, while 98 percent of the schools stated that they were not. Yet, the schools that responded to the item on bar passage rates for their minority and non-minority students indicated that the rate for minorities was significantly lower than that for non-minorities. On the average, 85 percent of non-minority students passed the bar examinations while only 51 percent of minority students did. We also found greater variability in the bar passage rates for any one year for minorities than for non-minorities. Minority rates for 1976, for example, varied from 19 to 94 percent depending on the school, compared to 72 to 93 percent for non-minorities. Given the lower rates for minority students, it is surprising to learn that only one school is affiliated with a minority bar passage program that supplements the course work.

We found a great deal of variability in bar passage rates by school, year, and state. For some schools the rate was always in the 70s while for others in the 80s, yet for some schools it varied by 15 percentage points from one year to the next (*e.g.*, from 67 to 83 percent). Likewise, there was much variation from state to state, ranging anywhere from 50 to 94 percent. While we believe that this is an accurate picture, the reader is asked to keep in mind that only 20 schools answered the question on bar passage rates for their state.

The last item on the questionnaire asked respondents to indicate whether there had been any reverse discrimination suits filed against their law school either before or after the United States Supreme Court decision in *Bakke*. Fifteen percent of the schools noted that such a suit had been filed against them, while 85 percent had not. Schools that had had such a reverse discrimination suit filed against them were reluctant to provide further information.

Discussion

Our conclusions are very much like those reached by Brown and Marenco (1980) for the ABA-approved law schools in California. Given the data, there is no reason to believe that minority enrollment will increase significantly during the 1980s in ABA-approved law schools in the United States. In fact, given the political and economic climate in the country at the present time, it is even conceivable that minority enrollment will decrease. This conclusion rests on the present trend in cutbacks for higher education, particularly for student aid, and on the findings that admissions decisions, for the most part, are based on GPA/LSAT scores; as is widely known, minority applicants tend to have lower GPA/LSAT scores than their white peers. Although all the schools indicated that they do take into account several noncognitive factors, admissions decisions continue to be based on the traditional measures—GPA/LSAT. We therefore call attention to the pressing need to develop and implement policies that give a more equal weight to noncognitive factors. Without such a change in existing policy, minority enrollment in law schools will not increase in the foreseeable future.

Furthermore, while law schools evaluate noncognitive factors in their applicant review process, in practice, noncognitive characteristics enter the admissions process at the second stage. This means that applicants are first reviewed on the basis of GPA and LSAT scores, and once a "qualified" pool has been established based on these criteria, the admissions committee and/or dean of admissions looks at noncognitive factors, (such as sex, ethnicity, geographical distribution, etc.) in an effort to select a more representative entering class. The problem with this type of procedure, however, is that a large proportion of qualified minority applicants are eliminated at the initial review.

Given the low socioeconomic status of minority applicants, schools and the federal government must be convinced to continue to provide financial assistance if institutions are to attract and retain minority students. Graduate and professional programs demand full-time attention; students cannot be expected to work while enrolled in these programs. Society has the responsibility for educating promising individuals from poor backgrounds in the same way that it educates students from wealthier backgrounds.

Finally, it appears, both in terms of the data and the political/economic problem, that the gains made toward equality of educational opportunity during the late 1960s and early 1970s have leveled off and that they may even be in the process of decline. The country, we believe, needs to take another hard look at itself and ask, as it did during the late '60s, whether equality in the educational system will continue to be a myth for low-income and minority students or whether it will become a reality. The present picture, we regret to report, does not look promising.

References

Brown, Susan E. and Marenco, Eduardo, Jr., *Law School Admissions Study.* San Francisco: Mexican American Legal Defense and Educational Fund, 1980.

CHAPTER VII
RACE CONSCIOUS PROGRAMS: CAN THEY STAND?

In *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978), the U.S. Supreme Court affirmed the California Supreme Court's ruling that the special admissions program at the University of California at Davis Medical School was unlawful. However, Justice Powell, joined by the four justices of the Brennan group,[1] held that the medical school was not precluded from according some consideration to race in its future admissions decisions, thus reversing the California Supreme Court on this issue. Since the *Bakke* decision, professional schools formerly utilizing quotas have amended their admissions procedures to fall within the mandate of *Bakke*, while other schools continue to use admissions procedures where race is one factor considered in admissions decisions. However, the *Bakke* decision did not end attacks on these race conscious admissions programs. In the United States Congress there have been and presently exist efforts to abolish affirmative action.[2] Similar legislation has been introduced at the state level.[3] Finally, civil actions have been instituted to curtail existing race conscious admissions programs.

Both before and after federal *Bakke*, the constitutional legality of specific admissions programs using race as one criterion has been litigated. Illustrative cases that have tested the legality of such programs are: *Di Leo v. Board of Regents of the University of Colorado*, 196 Col. 216, 590 P.2d 486 (1978), *cert. denied*, 441 U.S. 927 (1979); *McDonald v. Hogness*, 92 Wash. 2d 431, 598 P.2d 707 (1979), *cert. denied sub nom. McDonald v. Geberding*, 445 U.S. 962 (1980); *DeRonde v. Regents of the University of California*, 28 Cal.3d 875, 172 Cal. Rptr. 677, 625 P.2d 220 (1980). This analysis seeks to explain the rationale in these cases for upholding the race conscious admissions programs under review. Furthermore, it seeks to explain how the traditional basis for admitting students, reliance on the Law School Admissions Test (LSAT) and undergraduate Grade Point Average (UGPA), may not safeguard law schools from litigation or controversy as might be assumed. Indeed, its logical conclusion and the wisest course to pursue in admissions decisions are for schools to take a comprehensive view of appplicant traits.

Di Leo

In *Di Leo v. Board of Regents of the University of Colorado, supra*, an Italian-American law school applicant brought an action challenging the constitutionality of the Special Academic Assistance Program (S.A.A.P.) administered by the University of Colorado School of Law. The S.A.A.P. is a competitive admissions program for those eligible, where both subjective and objective criteria are used in evaluating applicants.

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[1] The "Brennan group" includes Justices White, Marshall, Blackman, and Brennan.

[2] For example, *see* Senate Joint Resolution 41, 97th Congress, authored by Sen. Hatch (R-Utah).

[3] *See* California's proposed Senate Constitutional Amendment 39 authored by Sen. Schmitz (R-Orange), 1981-82 Regular Session.

Standards for eligibility to the program read as follows:

> "[A] program designed to identify prospective law students who appear to have the intellectual ability to graduate from this law school but would not otherwise be eligible for admission under normal admission standards, and who are members of *identifiable groups which have not had adequate educational and cultural opportunities available to them and which are seriously underrepresented in the legal profession.* It is understood that Negroes, Mexican-Americans and American Indians are such groups, members of which may be expected to constitute most, if not all, the participants in this program. It is not intended, however, to preclude participation by members of other identifiable groups which are shown to fit within the standards set forth in the first sentence of this subsection." [4] (Emphasis supplied.)

Plaintiff, Di Leo, argued that while a program for the disadvantaged is itself constitutional, the S.A.A.P. as administered by the law school was unconstitutional in that it operated to exclude persons solely on the basis of their racial or ethnic background. Specifically, he argued that though he was not a member of the enumerated groups, he was a product of slum schools, was educationally, socially and economically disadvantaged, and should have been considered an eligible applicant for the S.A.A.P.

The court addressed, on appeal to the Supreme Court of Colorado, the threshold question of whether Di Leo had standing to challenge the constitutionality of the S.A.A.P. In distinguishing *Bakke, supra*, from the case before it, the Colorado court noted that in *Bakke* it was held that, but for the existence of the Davis special program, Alan Bakke would have been entitled to the educational benefit of admission to medical school. It then stated that Di Leo was not eligible for admission to the University of Colorado School of Law under normal admissions standards. In fact, it was not clear that Di Leo would have been admitted had he been considered eligible for the S.A.A.P. The court concluded that even if the S.A.A.P. were unconstitutional with respect to an applicant who would have been admitted if there were no special admissions program, Di Leo was not in a position to make that challenge. Relying on *Lee v. People*, [5] wherein it was held that a defendant had no standing to raise an equal protection argument because the defendant could not benefit from a favorable ruling, the *Di Leo* court held that the plaintiff lacked standing.

McDonald

The court in *Di Leo* did not adjudicate the merits of whether an admissions program could take into account race or ethnic status in evaluating applicants. This issue was addressed in *McDonald v. Hogness, supra*. In *McDonald*, an unsuccessful applicant to the University of Washington (U.W.) School of Medicine brought suit alleging that the school racially discriminated against him in violation of the Fourteenth Amendment, Title 6 of the 1964 Civil Rights Act and 42 U.S.C. § 1983.[6] He also asserted that the school's admissions policy was arbitrary and capricious, as was the school's treatment of his application.

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[4] *Di Leo*, 590 P.2d 486, 487.

[5] 170 Colo. 268, 460 P.2d 796 (1969).

The Washington Supreme Court first addressed whether using race as a positive factor in a state medical school's admissions policy violates the Equal Protection Clause of the Fourteenth Amendment and Section 601, Title 6 of the 1964 Civil Rights Act. The court, relying on the federal *Bakke* decision, distinguished the U.W. Medical School from the Davis Medical School. In *Bakke*, the Davis Medical School had had two admissions programs for the entering class of 100 students: the regular and the special. A separate committee operated the special program and selected only minority applicants to fill the 16 positions reserved for them. Alan Bakke was denied admission while applicants were admitted under the special program with grade point averages and MCAT scores significantly lower than his.

The trial court in *McDonald* described the U.W. Medical School's selection process as follows:

> [T]he Committee on Admissions functions simultaneously at three levels. . . . Generally, the paper credentials of each applicant are reviewed independently by two members of the Admissions Committee. . . . [C]andidates considered potentially competitive . . . are invited to meet with an interview-conference committee. . . . Interview-conference committees evaluate the candidates' paper credentials and the candidates . . . and forward their evaluations to the Executive Committee [EXCOM] of the Committee on Admissions as a part of each . . . application . . . [The EXCOM], which reviews applicants in the context of the total applicant pool, makes final determinations. . . .[7]

Factors in selecting students were also set forth:

> Candidates are considered comparatively on the basis of academic performance, medical aptitude, motivation, maturity, and demonstrated humanitarian qualities. Extenuating background circumstances are considered as they relate to these selection factors.[8]

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[6] U.S. Const., amend. XIV, § 1, reads in part: "nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Section 601, Title 6 of the 1964 Civil Rights Act, 42 U.S.C. § 2000d, states: "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."

42 U.S.C. § 1983 reads: "Every person who, under color of any statute, ordinance, regulation, or usage, of any State or Territory, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

[7] 598 P.2d at 710.

[8] Id. at 709.

U.W. considered race or ethnic status as a possible extenuating background circumstance.

Plaintiff, McDonald, argued that *Bakke* supported his position since at U.W. all qualified minority applicants were admitted, while nonminority applicants were forced to compete among themselves as in *Bakke* for the remaining seats. The court, however, reasoned that the Washington admissions program differed significantly from that at Davis. A quota or target number of minority applicant admissions was not involved. Further, there was not a separate admissions system isolating minority persons from competition with nonminority persons as in *Bakke*; the university "gave no separate consideration or separate treatment" to black, Chicano, and American Indian applicants interviewed.[9]

The court next considered when the use of race is permissible. It reiterated Justice Powell's opinion in *Bakke* that "the use of race in admissions [is] permissible if it is (l) designed to promote a compelling state interest, and (2) does not insulate an applicant from competition with remaining applicants."[10] The court continued,

> [I] n applying his test, Mr. Justice Powell characterizes the goal of the attainment of a diverse student body as compelling, stressing that the freedom to select a student body is an element of academic freedom, a special First Amendment concern.[11]

In dicta, Justice Powell in *Bakke* indicated that the Harvard admissions plan, which employs race as an admissions factor, furthers a compelling state interest in diversity of the student body. The *McDonald* court held that the University of Washington School of Medicine's admissions policies and procedures had the same redeeming characteristics. The court also determined that the system assured competition among applicants, thereby avoiding "denial of individualized consideration," the principal evil of the Davis plan.

Continuing to address when the use of race is permissible in admissions programs, Justice Wright of the Washington court reasoned that both Justice Powell in *Bakke* and the Washington Supreme Court in *DeFunis v. Odegaard*[12] had noted that it is not enough for a state to show that its purpose is substantial or compelling in having such a program. The use of race, a suspect classification, must be necessary to the accomplishment of the program's purpose. Justice Powell in *Bakke* indicated that a program under which race is but one factor in achieving diversity would survive this element. In addition, Justice Wright determined the Washington Supreme Court found such use necessary in *DeFunis* where a law school admissions policy had provided that minority applicants be compared to one another but not with nonminority applicants.

The court concluded, " [T] he University of Washington School of Medicine's admission policies and procedures survive the *Bakke* Powell and Brennan equal protection tests, using race as an admission factor in a manner permitted under both

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[9] Id. at 712.

[10] Ibid.

[11] Ibid.

[12] 82 Wash. 2d 11, 507 P.2d 1169 (1973), *vacated and remanded*, 416 U.S. 312 (1974).

Bakke and *DeFunis*. Accordingly, we hold that the use of race in these policies and procedures does not offend the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution."[13]

McDonald's second major argument was that the medical school's admissions policies and procedures were arbitrary and capricious and that their application to him constituted arbitrary and capricious action. He urged that delegating authority to the Board of Regents to set admissions requirements denied due process and violated equal protection rights because it contained no standards prescribing how that authority was to be exercised.

Addressing the issue of whether there had been a constitutional delegation of authority, the Washington court reiterated its holding in *Barry and Barry, Inc. v. Department of Motor Vehicles*, 81 Wash. 2d 155, 500 P.2d 540 (1972):

> [T] he delegation of legislative power is justified and constitutional and the requirements of the standards doctrine are satisfied, when it can be shown (1) that the legislature has provided standards or guidelines which define in general terms what is to be done and the instrumentality or administrative body which is to accomplish it, and (2) that *procedural safeguards exist to control arbitrary administrative action and any administrative abuse of discretionary power*. . . . (Emphasis supplied.)[14]

Contrary to McDonald's assertion, the court found that the legislature had provided standards that defined in general terms what was to be done and the administrative body to accomplish it. Under RCW 28B.10.050, RCW 28B.10.528 and RCW 28B.20.130,[15] the regents were mandated to determine entrance requirements and had the power and duty to establish these.

In its opinion, the court also addressed the more difficult question of whether procedural safeguards existed to control arbitrary administrative action and any administrative abuse of discretionary power. It reasoned that under its previous rulings, admissions committee decisions were subject to such review. Accordingly, it concluded, the opportunity for this limited review sufficed as a procedural safeguard.[16]

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[13] 598 P.2d at 715.

[14] Id. at 715, quoting from 81 Wash. 2d at 159.

[15] Revised Code of Washington § 28B.10.050 specifically states: "[E] xcept as the legislature shall otherwise specifically direct, the boards of regents and the boards of trustees for the state universities and state colleges shall determine entrance requirements for their respective institutions of higher education."

Revised Code of Washington § 28B.10.528 states: "[T] he governing boards of institutions of higher education shall have power, when exercised by resolution, to delegate to the president, or his designee, of their respective university or college, any of the powers and duties vested in or imposed upon such governing board by law. Delegated powers and duties may be exercised in the name of the respective governing boards."

Revised Code of Washington § 28B.20.130 reads in part: "[G] eneral powers and duties of the board of regents are as follows: . . . (3) Establish entrance requirements for students seeking admission to the university."

[16] 598 P.2d at 716.

In adjudicating whether both the admissions policies and procedures of the school and the process leading to the denial of McDonald's application were arbitrary and capricious, the court noted the following: the record indicated both the admissions committee and the interview-conference committee employed predetermined standards and procedures for selection; admissions committee members served on the reading committee to acquire experience; admissions committee members attended a training session; guidelines were provided for interview sessions; and, each interviewer was required to read the interviewee's application before the interview/conference. Thus, the court held that the findings adequately supported the trial court's conclusion that the selection process was not arbitrary and capricious.

In applying to these practices the test of arbitrary and capricious action, the court said, " [t] he foregoing standards and procedures consistently utilized and also used in evaluating McDonald's application cannot be characterized as 'wilful and unreasoning, without consideration,' or as exercised without 'due consideration'."[17] Thus, the medical school's practices did not constitute arbitrary and capricious conduct.

DeRonde

In a similar case involving a state university law school, admissions procedures that permitted consideration of "ethnic minority status" were again challenged. The California Supreme Court in *DeRonde v. Regents of the University of California*[18] decided whether admissions procedures that permitted consideration of "ethnic minority status" violated the equal protection guarantees afforded nonminorities under the federal or state constitutions.

The record before the California Supreme Court disclosed that for admission to King Hall in 1975, the University of California at Davis School of Law relied principally on a formula that combined an applicant's previous academic grade point average (GPA) with his or her score on the standardized Law School Admissions Test (LSAT). This formula yielded a predicted first year average (PFYA) which, it was hoped, measured to some extent the applicant's potential for law school study. The university considered several additional background elements to supplement or mitigate a lower PFYA. These factors included items such as growth, maturity and commitment to law study, as well as "ethnic minority status" contributing to diversity.[19]

Plaintiff Glen DeRonde, a white male applicant seeking enrollment in King Hall in 1975, challenged the latter consideration of ethnic status by the university. The university's reasons for considering minority status were primarily twofold: " [f] irst, an appreciable minority representation in the student body will contribute a valuable cultural diversity for both faculty and students and, second, a minority representation in the legal pool from which future professional and community leaders, public and private, are drawn will strengthen and preserve minority participation in the democratic process at all levels."[20] It was emphasized that though minority status was included as one of several pertinent selection factors, the university did not employ any quota system or reserve a fixed number of positions for minority applicants in its entering class.

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[17] Id.

[18] 28 Cal.3d 875, 172 Cal. Rptr. 677, 625 P.2d 220 (1981).

[19] 172 Cal. Rptr. at 679, 680.

The trial court found that DeRonde would have been rejected for admission even if the university had not employed an admission procedure which gave consideration to "ethnic minority status." In addition, DeRonde had, at the time of adjudication, already graduated from another law school and been admitted to the state bar. However, because of the importance of the issues in the case, the California Supreme Court chose not to dismiss the case as moot and chose to examine the constitutional issues.

The court stated that its analysis of the federal constitutional questions was both aided and controlled by the decision of the United States Supreme Court in *University of California Regents v. Bakke, supra.* Because Justice Powell represented the "swing" or pivotal vote in *Bakke*, the court focused first on his view. It noted that " [h] e concluded that although any race conscious classification must serve a compelling governmental interest, nevertheless 'the State has a substantial interest that legitimately may be served by a properly devised admissions program involving the competitive consideration of race and ethnic origin'."[21] Justice Richardson, speaking for the California court, reiterated and found significant Powell's description of the Harvard program in *Bakke*:

> [I] n such an admissions program, race or ethnic background may be deemed a 'plus' in a particular applicant's file, yet it does not insulate the individual from comparison with all other candidates for the available seats. The file of a particular black applicant may be examined for his potential contribution to diversity without the facts of race being decisive when compared, for example, with that of an applicant identified as an Italian American if the latter is thought to exhibit qualities more likely to promote beneficial educational pluralism. . . .
>
> This kind of program treats each applicant as an individual in the admissions process. The applicant who loses out on the last available seat to another candidate receiving a 'plus' on the basis of ethnic background will not have been foreclosed from all consideration for that seat simply because he was not the right color or had the wrong surname.[22]

The court concluded that in its view the admissions procedures used by King Hall to select its 1975 entering class did not vary in any significant way from the Harvard program. The primary and obvious defect in the quota system in *Bakke* was that it precluded individualized consideration of every applicant without regard to race. In the court's view, that fatal flaw did not appear in the admissions procedure at the Davis School of Law. Thus, the program passed federal constitutional muster under the standards prescribed by Justice Powell in *Bakke*.[23]

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[20] Id. at 680.

[21] Id. at 681.

[22] Id. at 681, 682, quoting from 438 U.S. 317, 318.

The California court was not content to review the issues under the Powell opinion alone, but also reviewed them under the Brennan opinion. The court noted that Justice Brennan would have upheld the Davis quota system invalidated by the majority in *Bakke*. It then opined that a race conscious law school admissions program that did not involve a quota, a priori, would be sustained by those holding the Brennan view. It also noted that Justice Brennan expressed approval of the Harvard admissions program, albeit on a different ground than the diversity benefit emphasized by Justice Powell. Justice Brennan in *Bakke* agreed with Justice Powell that a plan like the Harvard plan was constitutional, "at least so long as the use of race to achieve an integrated student body is necessitated by the lingering effects of past discrimination."[24]

Because *DeRonde* preceded the filing of federal *Bakke*, the parties neither framed nor litigated the issue of whether King Hall's admissions program "was necessitated by the lingering effects of past discrimination." Nevertheless, the California court adjudicated this issue and concluded that the record before it amply established "past discrimination" within the contemplation of the Brennan opinion and standards. The court's reasoning was as follows. First, the evidence supported a finding that the use of a race conscious admissions program was needed to prevent disproportionate underrepresentation of minorities in King Hall. Second, past societal discrimination against ethnic minorities is a demonstrable fact acknowledged in both the Powell and Brennan opinions in *Bakke*, as well as by the California court in *Price v. Civil Service Commission of Sacramento County*.[25] Finally, the existence of a connection between past discrimination and present disproportionate academic and professional underrepresentation was fully recognized in the Brennan opinion, wherein it was readily assumed that societal discrimination against minorities had impaired their access to equal educational opportunity.

Accordingly, a majority of the California court concluded that whether based on the Powell reasoning of assuring an academically beneficial diversity among the student body, or on the Brennan rationale of mitigating the effects of historical discrimination, the King Hall 1975 admissions program would meet federal constitutional standards. The court proceeded to acknowledge that a facially valid procedure may in its actual application produce a constitutionally discriminatory result. However, the record before it failed to show the university was deliberately using the challenged admissions procedure either as a "cover" for a quota system or as a means of systematic exclusion of, or discrimination against, white male applicants such as DeRonde. Without proof of such intent, the university's procedures must be upheld against a claim of an unlawful racial discrimination, even if accompanied by some evidence of a disproportionate impact.

Moreover, the evidence failed to support a finding of such disproportionate impact. DeRonde argued that extremely well-qualified male Caucasian applicants outnumbered poorly qualified minority applicants by more than three to one and, yet, were admitted to King Hall in a lesser percentage. This, he argued, constituted 'disproportionate' impact.

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[23] Id. at 682.

[24] Id. at 682, quoting from 438 U.S. 326, n.1.

[25] 26 Cal.3d 257, 161 Cal. Rptr. 475, 604 P.2d 1365 (1980).

Holding that the evidence failed to support this allegation, the court found "the principal difficulty with DeRonde's statistical analysis is that it is based upon the faulty premise that it is only a high PFYA or GPA which truly 'qualifies' an applicant for admission to law school. Yet as Justice Powell carefully explained in *Bakke*, racial or ethnic origin, as well as other 'nonobjective' factors, such as personal talents, work experience or leadership potential, properly may be considered in weighing each applicant's qualifications."[26] Additionally, white males continued to gain admission to King Hall in respectable numbers. Thus, the court ruled the university had not adopted or implemented a systematic plan or scheme to exclude male Caucasians.

The court then turned to DeRonde's contentions that the King Hall procedures violated provisions of the California Constitution. It ruled that *Price v. Civil Service Commission of Sacramento County, supra*, controlled. In *Price*, wherein an express quota was applied, the California Supreme Court held that the state constitution placed no greater restrictions upon affirmative action programs encouraging increased minority representation than were imposed by the federal constitution. Thus, the *DeRonde* court held it could not impose a state constitutional bar where the program involved no fixed quota but only considerations of race as one among several other qualifying factors.

The most obvious distinction between *Bakke* and *DeRonde* is the use of a racial quota. The presence of a racial quota in *Bakke* was the "fatal flaw"; whereas, the absence of one in *DeRonde* was the saving factor. However, at least one commentator has noted that the cynical observer would view no difference between that preference "indirectly produced by a basket of factors, including race, and that produced by racial quotas."[27] This commentator then questions whether there is a fundamental difference that would warrant the seemingly opposite holdings in *Bakke* and *DeRonde* if the exact percentage of representation of disadvantaged racial groups in professional school admissions may be achieved by both approaches.

The author then notes that when the impact of the two approaches on individual applicants is examined, the direct and indirect preferences do have differing effects. The distinguishing feature is the contrasting psychological effect these two approaches have on applicants, particularly the white applicants who do not gain admission. With racial quotas, exclusion is based on an immutable characteristic of the applicant for which he or she has no responsibility. On the other hand, when several factors are combined to disclose disadvantages of particular applicants, or potential contributions by them, most of these factors will not have the immutability of race.

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[26] 172 Cal. Rptr. at 684.

[27] *See* 8 Pepperdine Law Review 1131, 1150 (1981). The author noted that the California Supreme Court compared the admissions policy in *DeRonde* with that of Harvard. The conclusion reached by the California court was that "the admissions procedures used by the University [in *DeRonde*] to select its 1975 entering class at King Hall does not vary in any significant way from the Harvard program." (Citations omitted.) The author comments that "similar, indeed identical, results could occur under either the admissions policy in *DeRonde* or in *Bakke*. Under the admissions plans in *DeRonde*, DeRonde's race would represent a handicap or non-advantange in the competition for every seat in the law school. In *Bakke*, there was a different kind of handicap: students were in competition for a fewer number of seats, those not reserved for minorities." Statistically, the author argues, the plaintiff's overall chance for admission would be the same under the *Bakke* plan or under *DeRonde*: the admission plan approved in *DeRonde* could covertly achieve the same result that the quota system was forbidden to achieve in *Bakke*.

More importantly, under the *DeRonde* plan, an individual applicant is not precluded from admission based on his or her racial or ethnic background. No doubt there is increased representation of minorities over an admissions plan where solely the traditional predictors of LSAT and UGPA are utilized. However, there will be differing percentiles of entering minorities in any given year dependent on the composition of the entering class and the needs of the school. This is in stark contrast to the *Bakke* plan where a predetermined number of white and minority students were admitted.

Larry P.

The obvious fallacy in the line of decisions propounded by the above-mentioned commentator is that a preference is inherently built into the system of "objective" factors, particularly the LSAT, on which candidates are evaluated. Illustrative is a study conducted in 1977 by Educational Testing Service researchers which analyzed national law school data for the class entering in the fall of 1976.

> If the national law schools were to adopt an admissions policy taking no account of minority backgrounds of blacks and Chicanos, a majority of the students from those groups now admitted and enrolled would be excluded. If blacks and Chicanos were accepted at the rates for nonminorities at the same levels of LSAT and UGPA, the reduction in their enrollment would be 60% and 40%, respectively. If numerical predictors were employed exclusively for all applicants, the resulting reductions would be 76 to 78% for blacks and 45 to 48% for Chicanos. When law schools were asked to estimate the number of those minorities who would have been admitted if their minority status was unknown, they estimated reductions of 80% for blacks and 70% for Chicanos. The percentage of blacks among first-year law students would drop to between 1% and 2% from the current 5.3%, and the percentage of Chicanos would fall to between 0.4% and 0.8% from the current 1.36%.[28]

Efforts have been made to address the inequity between minorities and nonminorities on standardized examinations. In *Larry P. v. Riles*,[29] black students challenged the placement process for educable mentally retarded (E.M.R.) classes in California and particularly the use of standardized individual intelligence ("I.Q.")

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[28] Franklin R. Evans, "Applications and Admissions to ABA Accredited Law Schools: An Analysis of Data for the Class Entering in the Fall of 1976," *Reports of LSAC Sponsored Research*, 3 Vols. (Princeton, N.J.: Law School Admissions Council, 1977), 3.

[29] 495 F. Supp. 926 (N.D. Cal. 1979), appeal pending, U.S. Court of Appeals for the Ninth Circuit.

tests for placement in those classes. Plaintiff alleged that the use of these tests violated the Equal Protection Clauses of the United States and California constitutions; Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*; the Emergency School Aid Act of 1972, 20 U.S.C § 3191 *et seq.*; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794; and the Education for All Handicapped Children Act Amendments of 1975, 20 U.S.C. § 1401 *et seq.*[30]

The original complaint was a class action alleging only the federal constitutional claims and limited only to the city of San Francisco. After judgment for plaintiffs, defendants appealed to the Court of Appeals for the Ninth Circuit which affirmed the lower court's ruling. The plaintiffs then moved to expand the class to include all black California school children who had been or in the future might be classified as mentally retarded on the basis of I.Q. tests. The terms of the court order, including a preliminary injunction, were correspondingly expanded. Subsequently, in 1975, defendants voluntarily imposed a moratorium on I.Q. testing for E.M.R. placement of all children, regardless of race, in California. After California legislation failed to address and remedy the problems raised by the case, the case was brought to trial on the merits.[31]

Judge Peckham, who decided *Larry P.*, initially gave a history of the I.Q. test and of special education in California. He recognized at the outset "that the history of the I.Q. test, and of special education classes built on I.Q. testing, is not the history of neutral scientific discoveries translated into educational reform. It is, at least in the early years, a history of racial prejudice, of Social Darwinism and of the use of the scientific 'mystique' to legitimate such prejudices."[32] He then described the crucial role of I.Q. testing in the placement of children in E.M.R. classes, and noted that, in 1970, the California legislature required by explicit statutory provision that an I.Q. test be given for E.M.R. placement. Judge Peckham also observed that although subsequent legislative action sought to further protections to students, there was no indication of any practical change in the state's attitude toward standardized intelligence tests.[33]

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[30] The United States Constitution, amendment 14, section 1, reads in part: "[N] o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdictions the equal protection of the laws."

The California Constitution, article 1, section 7, states: "(a) [A] person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws. . . ."

Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, reads: "[N] o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

The Emergency Schoool Aid Act of 1972, 20 U.S.C. § 3191, states: "[T] he purpose of this subchapter is to provide financial assistance— (1) to meet the special needs incident to the elimination of minority group segregation and discrimination among students and faculty in elementary and secondary schools. . . ."

Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 reads in part: "[N] o otherwise qualified handicapped individual in the United States, as defined in Section 706(7) of this Title, shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service . . . ."

The Education for All Handicapped Children Act Amendments of 1975, 20 U.S.C. § 1401 *et seq.*, at § 1412, states: "[I] n order to qualify for assistance under this subchapter in any fiscal year, a state shall demonstrate to the Commissioner that the following conditions are met: . . . . (5) The State has established . . . (c) procedures to assure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of handicapped children will be selected and administered so as not to be racially or culturally discriminatory."

[31] For a period of time it was thought that the master plan for special education in California, enacted in experimental form in 1974, would address and perhaps remedy the problems raised by this case, but that hope never materialized.

In his discussion of I.Q. testing, Judge Peckham emphasized the racial composition of E.M.R. classes, which was the factual basis for the plaintiff's complaint. Data indicated that although black children constituted only 10 percent of the total student population, they comprised 25 percent of the population in E.M.R. classes. For the 20 school districts which accounted for 80 percent of California's black population, the overall disproportions were even more dramatic. In these districts, black students comprised about 27.5 percent of the overall student population and 62 percent of the E.M.R. population.

Preliminarily, the court addressed defendants' arguments that plaintiffs lacked a private right of action to enforce their federal statutory claims, and that any potential private rights could not be enforced because of plaintiffs' failure to exhaust administrative remedies. Relying on *Cannon v. University of Chicago*, 441 U.S. 677 (1979), the court stated there was an implied private right of action to enforce the provisions of Title VI and Section 504 of the Rehabilitation Act of 1973. It also noted that Congress had expressly recognized a private right of action to enforce the requirements of the Education for All Handicapped Children Act of 1975.[34] It further concluded that exhaustion of administrative remedies would have been meaningless and superfluous and, thus, inappropriate.

Proceeding to the merits of the case, the court discussed the Title VI claim. It stated that the signal Title VI case is *Lau* v. *Nichols*, 414 U.S. 563 (1974), which held that "discrimination is barred *which has that effect even though no purposeful design* is present." (Emphasis supplied.)[35] Paraphrasing *Lau*, the court concluded that placement mechanisms for E.M.R. classes operated with a discriminatory effect "that effectively foreclose [d] a disproportionate number of black children from any meaningful education."[36] Judge Peckham stated that if defendants would have shown that disproportionate enrollment in E.M.R. classes actually reflected and tapped a greater incidence of mild mental retardation in the population of black children and not "cultural bias" or if the intelligence tests had been "validated" for the purpose of E.M.R. placement of black children, then defendants' E.M.R. placement process would have survived. Believing that the "effects test" of Title VI expressed in *Lau v. Nichols* was still the law, the court ruled that defendant's procedures for assignment to E.M.R. classes must be invalidated on Title VI grounds alone.

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[32] 495 F. Supp. at 935. *See, e.g.*, Stephen Gould's description of the I.Q. testing movement in America: "[A]merican psychologists perverted [Alfred Binet's] intention and invented the hereditarian theory of I.Q. They reified Binet's scores, and took them as measures of an entity called intelligence. They assumed that intelligence was largely inherited, and developed a series of specious arguments confusing cultural differences with innate properties. They believed that inherited I.Q. scores marked people and groups for an inevitable station in life. And they assumed that average differences between groups were largely the products of heredity, despite manifest and profound variations in quality of life." Stephen Jay Gould, *The Mismeasure of Man* (New York: W.W. Norton & Co., Inc., 1981), p. 157.

[33] 495 F. Supp. at 940 fn.25.

[34] 20 U.S.C. § 1415(e)(2) details the procedural safeguards of the Education for All Handicapped Children Act of 1975: "[A]ny party aggrieved . . . shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph, the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate."

The Title VI analysis also applied to the Rehabilitation Act of 1973 and the Education for All Handicapped Children Act of 1975 claims. The court opined that this analysis similarly suggested the same conclusion. Specifically, the court concluded the tests must be "validated for the specific purpose for which they are used."[37]

"Validation," in the courts opinion, is the determination of whether the placement tests or other evaluation materials are suited for the purposes for which they are used. The court distinguished the showing required for "validation" of I.Q. tests and E.M.R. placement mechanisms from that required for "validation" of employment tests in employment discrimination cases and reasoned that a different showing was required. The court's concern was not with predictions of performance but with those characteristics consistent with E.M.R. status and placement in E.M.R. classes, *i.e.*, people whose mental capabilities made it "impossible" to profit from regular classes, even with remedial instruction. It concluded that the I.Q. tests were validated for placement of white middle class children in E.M.R. classes but not black children.

Judge Peckham addressed defendants' evidence that the predictive validity of the I.Q. tests had been established. In his opinion, " [t] he question for predictive validity is not whether the standardized intelligence tests predict school performance generally, but whether they predict such performance for black elementary school children, as opposed to white elementary school children, who score between two and three standardized deviations below the mean on intelligence tests."[38] Noting the paucity of studies on predictive validity, he found the key holding of existing studies was that I.Q. tests were differentially valid for black children and white children. In studies of grade predictions, significant differences were found in correlations between I.Q. test scores and school performance for black children and white children. This meant more errors will be made for black children than whites in predicting school performance, and that, Judge Peckham concluded, was unacceptable.

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35. 495 F. Supp. at 964, quoting from 414 U.S. at 568.

36. Id. at 965.

37. Id. at 968.

38. Id. at 972.

Even though his decision could rest on the federal statutory claims, Judge Peckham extended his analysis to the constitutional arguments. Initially he determined whether strict scrutiny was the appropriate standard to review the federal equal protection claims. Relying on *Washington v. Davis*, 426 U.S. 229 (1976), the court stated that disproportionate impact, the central fact of the I.Q. tests and the E.M.R. placement process generally, standing alone, did not trigger the rule "that racial classifications are to be subjected to the strictest scrutiny and are justifiable only by the weightiest of considerations."[39] Strict scrutiny, Judge Peckham ruled, "is triggered only by actions that can 'ultimately be traced to a racially discriminatory purpose.' "[40]

The simplest method for ascertaining administrative or legislative intent, Judge Peckham reasoned, was to move in the direction of an "objective" test based on the foreseeable effects of a challenged decision. However, he continued, a completely "objective" standard of intent based on foreseeable effects would clearly be inconsistent with recent Supreme Court holdings, collapsing the distinction between *de facto* and *de jure* segregation.[41]

While a majority of federal appellate courts have rejected this purely objective "effects" standard, they have moved only one step towards subjective determination of intent. They have created a presumption that school boards and others charged with discriminatory intent intend the natural and foreseeable consequences of their actions. Judge Peckham observed that the Ninth Circuit had not approved of this presumption approach, and that recent Supreme Court cases suggested further refinement in the presumption approach would be necessary.[42]

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39. Id. at 975, quoting from 426 U.S. at 242.

40. Id. at 975.

41. *See, e.g.*, Keyes v.School District No. 1, Denver, Colo., 413 U.S. 189, 93 S. Ct. 2686, 37 L. ed.2d 548 (1973).

42. The Ninth Circuit Court of Appeals had evidently adopted a more stringent test for intent, requiring a "determination that the school authorities have intentionally discriminated against minority students by practicing a deliberate policy of racial segregation." Soria v. Oxnard School District, 488 F.2d 579, 585 (9th Cir. 1973); Johnson v. San Francisco Unified School District, 500 F.2d 349 (9th Cir. 1974); Berkelman v. San Francisco Unified School District, 501 F.2d 1264 (9th Cir. 1974).

In De La Cruz v. Tormey, 582 F.2d 445 (9th Cir. 1978), *cert. denied*, 441 U.S. 965, 99 S. Ct. 2416, 60 L. ed.2d 1072 (1979), the court of appeals suggested there may be some relaxation of the standard. In that case, the court reversed the district court's dismissal of a lawsuit challenging the lack of childcare facilities in the San Mateo Community College District. The only issue for the court was whether to dismiss the complaint. It found that, "plaintiffs have alleged a course of conduct by defendants susceptible of an inference of intentional discrimination." It was instructive to Judge Peckham that the allegations that permitted "an inference of intentional discrimination" amounted only to evidence that defendants knowingly failed to revise their policies and spend money on childcare when the existing policy had the "direct effect" of excluding or hindering substantial numbers of women from educational opportunities.

In Personnel Administrator of Massachusetts v. Feeney, 442 U.S. 256, 99 S. Ct. 2282, 60 L. ed.2d 870 (1979), the Supreme Court reversed a three-judge court's ruling that the Massacusetts veterans' preference law for civil service employment was unconstitutional. In its decision, the court explicitly rejected the objective, tort standard of intent. " 'Discriminatory purpose,' however, implies more than intent as volition or intent as awareness of conse-

Relying on *Personnel Administrator of Massachusetts v. Feeney*, 442 U.S. 256 (1979), *Columbus Board of Education v. Penick*, 443 U.S. 449 (1979), and *Dayton Board of Education v. Brinkman*, 443 U.S. 526 (1979), Judge Peckham noted that there is no "general" presumption that can "routinely" be applied to affect the burden of producing evidence in discrimination cases. Nevertheless, the use of presumptions may be required in particular factual settings. Thus, he concluded, a factual showing of discriminatory impact provides no simple shortcut to the ultimate fact of discriminatory intent. "[T]he situation 'demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available'."[43]

In applying the law, the court stated that discriminatory intent did not necessarily mean an intent to harm black children. It reasoned that since *Brown v. Board of Education*, 347 U.S. 483 (1954), an intent to segregate minority children in separate schools has sufficed to prove a prima facie violation of the Fourteenth Amendment. An intention to segregate into special, all-day classes was functionally indistinguishable. Even a well-meaning intention to adopt and retain procedures that placed disproportionate numbers of minorities in these special, isolated classes would therefore serve to prove that "a discriminatory purpose has been a motivating factor in the decision." The Court continued, "[o]nce such a purpose is shown, even if it was not the sole or predominant purpose behind the actions in question, then defendants must show that the actions would have resulted anyway in the absence of the prohibited motive."[44]

The court weighed several factors in ascertaining intent. They included: (l) the impact of the official actions; (2) the historical background of the decisions; (3) the specific events leading up to the challenged decisions; (4) the departure from normal procedural sequence; (5) substantive departures that suggest the outcome might have been different; and, (6) direct statements by State Department of Education officials. After weighing these factors, the court determined that judicial deference was not justified in the case at hand.

Finding that plaintiffs had met their burden of proving discriminatory intent, the court applied the "strict scrutiny test" to defendants' actions. Under the strict scrutiny or compelling interest test, defendants could not prevail unless they were able to justify the racial classification by showing that it was necessary to the accomplishment of a compelling state interest. The court concluded that defendants could establish no compelling state interest in the use of the I.Q. tests nor in

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quences. . . . It implies that the decision maker, in this case the state legislature, selected or reaffirmed a particular course of action at least in part 'because of,' not merely 'in spite of', its adverse effects on an identifiable group." (495 F. Supp. at 978, quoting from 442 U.S. at 279.)

Judge Peckham reasoned that," *Feeney* counsels us that 'inevitability or forseeability of consequences' can permit 'a strong inference that the adverse effects were desired,' but 'an inference is a working tool, not a synonym.' " He thus concluded, "[t]he presumption analysis is not therefore necessarily precluded, but it cannot be utilized mechanistically to reject probative evidence and find a subjective intent grounded solely on discriminatory impact." (495 F. Supp. at 978.)

[43] 495 F. Supp. at 979, quoting from *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 266.

[44] Id. at 979, 980.

the maintenance of E.M.R. classes with overwhelming disproportions of black enrollment.

Judge Peckham also reviewed plaintiffs' claim under the intermediate standard of review. In his opinion, the Ninth Circuit's decision in *Berkelman v. San Francisco Unified School District*, 501 F.2d 1264 (9th Cir. 1974) provided the necessary guidance on the applicability of an equal protection standard of review between strict scrutiny and the permissive "rational basis" test. Utilizing the test articulated in *Berkelman*, the court found "there is little evidence here that the I.Q. tests or the perpetuation of 'troubling' disproportionate enrollments *substantially furthers* the purpose of providing the best possible education for California public school students."[45] (Emphasis added.) Thus the Court concluded that even if discriminatory intent had not been shown, plaintiffs under the authority of *Berkelman* had still proved a violation of the federal equal protection clause.[46]

Larry P. holds that unvalidated standardized examinations having a discriminatory impact on minority children in classroom placement violate the Equal Protection Clause of the U.S. Constitution. However, a similar case in a different circuit found that use of such tests was not a violation of the federal Equal Protection Clause.

In *Parents in Action on Special Education (PASE) v. Hannon*, 506 F. Supp. 831 (N.D. Ill. 1980), an action was brought on behalf of all black children who had been or would be placed in special classes for the educable mentally handicapped (E.M.H.) in the Chicago school system. Plaintiffs claimed that the use of racially biased intelligence tests in E.M.H. placement violated the Equal Protection Clause of the Fourteenth Amendment as well as various other federal statutes.

It was undisputed that there were disproportionate numbers of black children placed in E.M.H. classes. The plaintiffs alleged this was due to excessive reliance on the standardized examinations which were used in evaluating students for placement in these classes. More importantly, they alleged the tests were culturally biased.

The court recognized that blacks as a group scored about one standard deviation — 15 points — lower than whites on standard intelligence tests. However, the court could not discern from the expert testimony presented whether this lower performance and the resulting effects, placement in E.M.H. classes, were due to cultural bias. Therefore, the district judge, Judge Grady, made an independent, item-by-item analysis of the utilized tests to determine whether they were, in fact, culturally biased.

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[45] Id. at 986.

[46] Two additional claims were addressed by the court, the state claims and the adequacy of representation by the named plaintiffs. The court opined that under the California Constitution, school districts had a constitutional duty to eliminate *de facto* as well as *de jure* segregation. Therefore, without scrutinizing specific intent, the court ruled that plaintiffs had proved a violation of California's Equal Protection Clause guarantee.

On the issue of adequacy of representation by the named plaintiffs, the court found that the individual plaintiffs had been assigned to E.M.R. classes greatly overrepresented by black children, and that their assignments had been based on racially and culturally biased criteria, notably the I.Q. tests. Moreover, their particular situations did not affect the outcome of the class action, and the case had been vigorously contested. Thus, the court ruled that the named plaintiffs were adequate representatives of the class.

Three tests were analyzed, the Wechsler Intelligence Scale for Children, Revised (WISC-R), the Wechsler Intelligence Scale for Children (WISC), and the Stanford Binet Intelligence Test. Discounting plaintiffs' expert testimony on many other items, the Court did concede that eight items on the WISC and WISC-R tests and one item on the Stanford Binet test were either racially biased or so subject to suspicion of bias that they should not be used. However, he also ruled that missing one of these items was not crucial in placing a child in an E.M.H. class.

Judge Grady also reasoned that the importance of a biased individual item was lessened by the fact that a child continued with the subtest until he or she had a certain number of consecutive misses. Second, he noted, some of the items occurred at a level of difficulty which a child in his or her early school years, the time when E.M.H. placement is generally made, was not expected to reach.

The obvious defect in this approach is that it would permit individual judges to formulate, *in camera*, their own definition of test validation or test bias. Such discretion to local judges would lead to utterly chaotic and unprincipled constitutional guidelines. More importantly, one questions whether any individual judge has the expertise or qualifications to define test validity or test bias and to determine autonomously that there is neither discriminatory effect nor intent. Furthermore, such discretion would invite abuse stemming from either the conscious or subconscious biases and backgrounds of local judges.

Although Judge Grady additionally concluded that the impact of the biased items was lessened by the fact that a child continued with the subtest until a certain number of unsuccessful misses were made, the fact remains the biased items contributed to the placement of minority children in E.M.H. classes. Even if one were to concede that failure of a biased item would not guarantee placement in an E.M.H. class, the number of allowed consecutive misses is such that missing a biased item would contribute significantly to E.M.H. placement.[47] On the issue that certain items occurred at a level of difficulty which a child was not expected to reach anyway, the fact remains that they had a discriminatory effect on minority children. If biased items are at the upper spectrum in terms of difficulty, then minority children would be at a disadvantage in scoring at the upper levels in the tests.

Judge Grady also ruled that a factor which mitigated the impact of missing any particular question was the fact that the I.Q. score was not the sole determinant in placing a child in an E.M.H. class. First, according to procedures ostensibly used by the Chicago Board of Education, a psychologist must evaluate the child in light of the child's test score. Additionally, the identification and placement of mentally handicapped children involved several levels of investigation. Thus, he ruled that the possibility of the few biased items on the test causing an E.M.H. placement that would not otherwise occur was practically nonexistent.

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[47] *See* 506 F. Supp. at 875. Judge Grady stated that a child would be disqualified if he missed the previous four items when incorrectly answering a biased item, *e.g.*, item no. 19 on the "General Information" subtest of the WISC.

On this issue, plaintiffs had claimed that, despite the various steps involved in E.M.H. placement, the placement decision was in fact made primarily on the basis of the child's I.Q. score. They also claimed that social workers were not used often enough and that there was insufficient investigation of a child's family situation and his adaptive behavior outside the school environment. To support their contention, the plaintiffs introduced expert testimony correlating low I.Q. scores with recommendation and placement in E.M.H. classes.

Judge Grady's answer to plaintiffs' expert testimony was that the evidence showed that a low I.Q. score frequently did not result in E.M.H. placement. However, this may have been more attributable to a lack of physical space in the E.M.H. classrooms, as Judge Grady earlier recognized, than to inherent protections afforded minority children. Moreover, plaintiffs' expert testimony did disclose a significant correlation between low I.Q. score and recommendation for E.M.H. placement.[48]

The court accepted the defendants' explanation of I.Q. differences between blacks and whites: that it was caused by socioeconomic factors which interfere with the development of intellectual skills. Thus, it concluded that plaintiffs had failed to prove their contention that the WISC-R, WISC, and Stanford Binet I.Q. tests were culturally unfair to black children, resulting in discriminatory placement of these children in classes for the educable mentally handicapped.

In addition to the defects in the rationale mentioned above, the *PASE* decision would judicially sanction the use of a test which places a disproportionate number of minority chidren in stigmatizing, dead-end E.M.H. classes. Although Judge Grady would remove those nine items which he considered racially biased from the I.Q. tests, one cannot seriously expect these changes to halt the overenrollment of minority children in E.M.H. classes. The removal of these nine biased items will not end the enrollment of 3.7 percent of all black students in E.M.H. classes, while only 1.3 percent of their white counterparts will be enrolled in E.M.H. classes. The removal of these nine biased items will not correct a placement process where there is a disparity of 284 percent between the enrollment rate for black students and white students in E.M.H. classes. Unfortunately, the *PASE* decision will perpetuate the problem which even Judge Grady recognized, in part, that "some children are placed in E.M.H. classes who should not be there,"[49] and the disproportionate majority of these children will be minorities.

Conclusion

A summary of recent case law establishes that there is no legal impediment to properly constructed admissions programs which incorporate race-conscious criteria as one factor for consideration.[50] As commentators on *Bakke* have pointed out, the decision that law schools make as to the weight to be accorded different admissions criteria is ultimately and decisively one of policy. Legal analyses, whether broadly or narrowly based, do not permit institutional evasion of the tacit policy ramifications of that choice.

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[48] *See* 506 F. Supp. at 880. For example, in the I.Q. range of 55-59, 81 percent of the children were recommended for E.M.H. placement.

[49] Id. at 881.

[50] *See, e.g.*, Comment, "Beyond *Bakke* — The Use of Noncognitive Factors in Professional School Admissions Decisionmaking," 54 Wash. L. Rev. 373 (1979); O'Neill, " Racial

As one author stated:

> Law schools are in a difficult position no matter how they act, for their responses to the competing demands affecting the shape of a minority-admissions program implicate the interests of many beside themselves: minority and non-minority applicants and students, the university as a whole, the legal profession, and the larger society. For many of us, it is uncomfortable to be making decisions affecting these interests. It is essential to recognize that there is no escape from that discomfort. Any decision a law school makes has such an impact, and the propriety of a particular decision within the range of arguable differences over what the law requires must therefore be ultimately justified on policy grounds. A school may choose to narrow its program more than is required, but it would be tragic for such a choice to be made on the basis of supposed moral or legal imperatives grounded in a broader reading of *Bakke* than a conscientious, fair-minded analysis requires. . . .
>
> The point of recognizing that there are competing interpretations of *Bakke* is not to enable a school to choose a "correct" interpretation. Law schools are not being asked to decide a case which will interpret and clarify *Bakke*, but to consider the extent of their own discretion under *Bakke* to do as wise educational policy seems to lead. The need in such a context is to recognize that tenable choices are available, and that those who insist that the Powell opinion has normative authoritativeness have chosen to take a broad reading of his and Justice Stevens's opinions at several critical points. They are of course free to do that, but others are equally free, morally and legally, to choose narrower interpretations. The critical issues remain ones of educational policy, including each university's own sense of fairness in dealing with the competing interests. Those seeking to restrict minority-admissions programs should meet the issues of policy thereby raised. They should not seek to insulate their views on the merits of those issues by an appeal to respect for law and the Supreme Court.[51]

Not only is it unavoidable for law schools to take policy stances with respect to the factors they evaluate for admissions, but they must also accept and be able to countenance the social and educational consequences of those institutional decisions. In the Ford Foundation-sponsored *Final Report of the Commission on the Higher Education of Minorities*, commission members labeled equal access in education as a myth. Among other recommendations, they urged institutions to,

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Preference and Higher Education: The Larger Context," 60 Va. L. Rev. 925 (1974); and Schwartz, "Discriminatory Intent and Disproportionate Impact: A Postmortem of Regents of the University of California v. Bakke and a Look Beyond," 15 Cal. W. L. Rev. 179 (1979).

[51] Lesnick, "What Does *Bakke* Require of Law Schools?," 128 U. of Penn.L.Rev. 141, 143-48 (1979). *See also* Nickel, "Preferential Policies in Hiring and Admissions: A Jurisprudential Approach," 75 Colum. L. Rev. 534 (1975).

"reexamine the educational rationale underlying traditional selective admissions practices. Ideally, the predictive model of admissions should be replaced with a model that focuses on the institutions value-added mission."[52] By value-added mission it is meant that institutional objectives encompass potential student educational growth and development, as well as normative and relativistic achievement.

Despite clear legal approbation of admissions plans formulated to include a broad array of student traits, including racial/ethnic considerations, and notwithstanding the continual recommendations by select commissions on higher education that admissions criteria be expanded to reflect educational missions and student diversity, many law schools have evinced significant reluctance to deviate from a rigid GPA/LSAT predictive index for admissions decisions.

Particularly now, with the development of the New LSAT, which was administered for the first time in June of 1982 and for which no validity studies exist, it would appear a propitious moment to take a less myopic view of admissions criteria as they reflect student potentialities. Such a comprehensive assessment of student aptitude for professional study will safeguard against erroneous use of objective criteria grounded in misperceptions about the scientific precision of test instruments and their ability to measure what they purport.[53] As *Larry P., supra*, illustrates, blind adherence to a seemingly neutral measurement can result in invidious discrimination against groups for whom an examination has not been validated or normed.

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52. *Final Report of the Commission on the Higher Education of Minorities*, (Los Angeles: Higher Education Research Institute, Inc., 1982) at 30.

53. *See, generally*, Jeffrey M. Blum, *Pseudoscience and Mental Ability* (New York: Monthly Review Press, 1978) and Paul L. Houts, ed., *The Myth of Measurability* (New York: Hart Publishing Company, Inc., 1977).

CHAPTER VIII
FINANCIAL ASSISTANCE FOR MINORITY LAW STUDENTS

Introduction

After extensively researching the funding sources available to law students seeking assistance, with a particular emphasis on minority scholarships, we must conclude that the financial aid prospects for minority law students are not terribly encouraging. The federal government, while drastically cutting its level of financial assistance to students, suggests that students seek aid from private sources. Unfortunately, many private scholarships are also being discontinued. Among these are: the Ford Foundation's Graduate Fellowships for Minorities and the Danforth Opportunities Scholarship Program. Nearly 15 percent of the 99 universities and associations responding to our inquiries no longer contribute money to support graduate studies.

There is, however, some funding still available. In any search for aid, following these seven steps may help.

1. Inquire about financial aid at the law school to which you have applied. Check for scholarships as well as the usual financial aid options, such as federal dollars.

2. Scan the resource list in this chapter for a likely granting organization.

3. Send postcards to the institutions to secure further information. Be aware of the application deadlines. Many organizations have deadlines in December and January. Begin your search for money in the summer. A suggested text for requesting information is:

> Dear Sir or Madame:
>
> I am interested in receiving further information about your (scholarship, fellowship, grant, loan) program. I would appreciate a response as soon as possible. Thank you very much for your assistance.
>
> Your name and address

Generally organizations respond promptly.

4. Many applications have space for you to tell the organization about yourself. Use this to let them know *you*, your background, hopes, and goals, unless restricted to other information.

5. Take note of the restrictions set up by an organization. Occasionally, they will require membership in a specific club or organization. Consider joining to qualify for the money.

6. Applications generally require two to three letters of recommendation from current or former teachers, administrators and/or employers.

7. Explore any organizational connections, *e.g.*, parents' union and company affiliation, sororities, fraternities and churches (Catholic, Lutheran, and Presbyterian churches often have stipends or scholarships for children of parishioners).

Resource List

We have divided the currently available scholarships, fellowships, grants and loans into the following four types and have compiled these four into a resource list.

- I. Associations: Special Scholarships for Minorities and Women
- II. Associations: General Fellowships, Grants and Loan Programs
- III. Financial Aid from Universities: Minorities
- IV. Financial Aid from Universities: General

I. ASSOCIATIONS: Special Scholarships for Minorities and Women

All Indian Pueblo Council, Higher Education/Scholarship Program

A. Ethnic/gender group restrictions: 17 Pueblo Indians of New Mexico

B. Geographical restrictions: Residents of New Mexico

C. Average amount of dollars awarded: Varies

D. Restricted use of money: School and related costs

E. Application deadline: March 1st

F. Information/application contact:

Scholarship Program
All Indian Pueblo Council
P.O. Box 6507
1015 Indian School Rd., NW
Albuquerque, NM 87197

G. Additional information: The student must apply to the financial aid office of the school of his or her choice before being considered for scholarship (as per *Federal Register*, March 7, 1975).

The American Association of University Women Educational Foundation

A. Ethnic/gender group restrictions: Women only

B. Geographical restrictions: None

C. Average amount of dollars awarded: $3,000 to $7,000

D. Restricted use of money: Cannot be used for repayment of loans or other personal obligations.

E. Application deadline: December 15th; applications available on August 1st.

F. Information/application contact: Educational Foundation Programs Office
AAUW
2401 Virginia Ave., NW
Washington, DC 20037

G. Additional information: These fellowships are to assist women who are in their final year of professional training.

American Indian Scholarships, Inc.

A. Ethnic/gender group restrictions: American Indians and Alaskan Natives, one-quarter blood quantum or more

B. Geographical restrictions: None

C. Average amount of dollars awarded: $3,000

D. Restricted use of money: None

E. Application deadline: July 15th

F. Information/application contact: Mr. John C. Rainer
Director
American Indian Scholarships, Inc.
P.O. Box 1106
Taos, NM 87571

BOCES Geneseo Migrant Center

A. Ethnic/gender group restrictions: Occupational restriction: interstate migrant farmworkers youth

B. Geographical restrictions: None

C. Average amount of dollars awarded: $250

D. Restricted use of money: None

E. Application deadline: None

F. Information/application contact: Dr. Gloria Mattera
Director
BOCES Geneseo Migrant Center
Holcomb Building, 210/211
Geneseo, NY 14454

Bureau of Indian Affairs Higher Education Scholarship Grant Program

A.	Ethnic/gender group restrictions:	American Indians and Alaska Natives
B.	Geographical restrictions:	None
C.	Average amount of dollars awarded:	Single students - $4,750, students with dependents - $6,387
D.	Restricted use of money:	Monthly stipends are provided to defray living expenses; a book allowance is also provided.
E.	Application deadline:	March 15th. After eligibility determination is made, financial aid applications are mailed and are due by July 15th.
F.	Information/application contact:	Director Special Scholarship Program in Law for American Indians P.O. Box 4456 - Station A Albuquerque, NM 87196
G.	Additional information:	Applicants must request that their Bureau of Indian Affairs (BIA) Area or Agency office submit to the Program's office *directly* a certificate of degree of Indian Blood (CIB). The CIB must contain: 1. tribal affiliation 2. blood quantum 3. original signature of a BIA certifying officer.

Business and Professional Women's Career Advancement Scholarship

A.	Ethnic/gender group restrictions:	Women 25 yrs or older
B.	Geographical restrictions:	None
C.	Average amount of dollars awarded:	$100 to $1,000
D.	Restricted use of money:	Cannot be used for payment of classes already in progress.
E.	Application deadline:	Available between 2/15 - 4/15 (due 5/1) and 7/15-9/15 (due 10/1)

F. Information/application contact:
Scholarships
Business and Professional Women's Foundation
2012 Massachusets Ave., NW
Washington, DC 20036

Catholic Scholarships for Negroes, Inc.

A. Ethnic/gender group restrictions: Blacks

B. Geographical restrictions: None

C. Average amount of dollars awarded: Moderately sized grants

D. Restricted use of money: None

E. Application deadline: January 15th

F. Information/application contact:
Ms. Caroline Putnam
Catholic Scholarships for Negroes, Inc.
73 Chestnut St.
Springfield, MA 01103

G. Additional information: Students should apply in senior year of high school; aid can continue through graduate school.

Clairol Loving Care Scholarship Program

A. Ethnic/gender group restrictions: Women over 30 years

B. Geographical restrictions: None

C. Average amount of dollars awarded: $100 to $1,000

D. Restricted use of money: Cannot be used for classes already in progress.

E. Application deadline: Available between 2/15 - 4/15 (due 5/1); available between 7/15-9/15 (due 10/1)

F. Information/application contact:
Scholarships
Business and Professional Women's Foundation
2012 Massachusetts Ave, NW
Washington, DC 20036

Coro Foundation Hispanic Law Students Program

A. Ethnic/gender group restrictions: 1st and 2nd year Hispanic law students

B. Geographical restrictions: 10 week fellowship program in Los Angeles metropolitan area

C. Average amount of dollars awarded: Up to $2,000

D. Restricted use of money: For fellowship program

E. Application deadline: Contact foundation

F. Information/application contact:
CORO Foundation
Oviatt Building
617 South Olive St., # 610
Los Angeles, CA 90014

Diuguid Fellowship Program

A. Ethnic/gender group restrictions: Mature women whose careers have been interrupted due to marriage or some other reason.

B. Geographical restrictions: Southern region of the United States

C. Average amount of dollars awarded: $3,000 to $6,000

D. Restricted use of money: For one year of intensive training or concentrated study

E. Application deadline: November 15th

F. Information/application contact:
Dr. S. N. Nabrit
The Diuguid Fellowships
795 Peachtree St., NE
Suite 484
Atlanta, GA 30308

Charles R. Drew National Schlarship Commission

A. Ethnic/gender group restrictions: Black American men

B. Geographical restrictions: None

C. Average amount of dollars awarded: Approximately $500 annually; emergency grants of approximately $300

D. Restricted use of money: Tuition fees only

E. Application deadline: March 31st

F. Information/application contact:

Bro. Elijah Reed, Chairman
Charles R. Drew Scholarship Commission
1015 Knight Drive
Martinsville, Louisiana 70502
or
Omega Psi Phi Fraternity, Inc.
National Headquarters
2714 Georgia Ave., NW
Washington, DC 20001

G. Additional information: Must be an Omega Psi Phi that has maintained averages of "B" or above. In some cases, an average of less than "B" is accepted if there is evidence of excellence in a student's major fields. One must be recommended by his chapters and district representatives.

Getty Oil Company

A. Ethnic/gender group restrictions: Hispanic, black and American Indian

B. Geographical restrictions: See category "G" below

C. Average amount of dollars awarded: $1,000 to 2,000

D. Restricted use of money: None

E. Application deadline: Selection conducted by school

F. Information/application contact: Check with the Financial Aid Office or Department Office of the college/university.

G. Additional information: Restricted to those schools that provide education in disciplines identified as critical to the company and those institutions in local community of major company offices.

Graduate and Professional Opportunities Program Office of Higher and Continuing Education

A. Ethnic/gender group restrictions: All minorities and women

B. Geographical restrictions: National of United States or in United States for other than a temporary purpose and intending to become a permanent resident.

C. Average amount of dollars awarded: Maximum $4,500 for 12 months; renewable up to 36 months. Institutions receive $3,900 cost of education allowance for 12 month period.

D. Restricted use of money: None

E. Application deadline: See institution.

F. Information/application contact:

Dr. Donald Bigelow
Office of Higher and Continuing Education Rm. 3060, Rob. - 3
400 Maryland Ave., SW
Washington, DC 20202

G. Additional information: The institution receives dollars and recommends eligible students for the award of fellowships. Interested students should contact institutions in which they are enrolled for information.

Thomas T. Hayashi Law Scholarship

A. Ethnic/gender group restrictions: Asian American

B. Geographical restrictions: None

C. Average amount of dollars awarded: $700 annually for 3 years

D. Restricted use of money: None

E. Application deadline: July 15th

F. Information/application contact:

JACL
Thomas T. Hayashi Law Scholarship
1730 Rhode Island Ave., NW
Suite 204
Washington, DC 20036

G. Additional information: Applications considered on following priorities:

1. Member of JACL or JAYS or child of JACL member
2. Any person of Japanese ancestry residing in United States
3. Any Asian American residing in United States
4. Entering law students only.

Indian Fellowship Program

A.	Ethnic/gender group restrictions:	American Indians
B.	Geographical restrictions:	None
C.	Average amount of dollars awarded:	Approximately $7,642
D.	Restricted use of money:	Tuition, stipend for personal living expenses, allowance for dependents, some research costs and some travel (in extreme hardship case).
F.	Information/application contact:	Alice T. Ford, Coordinator Indian Fellowship Program United States Dept. of Education 400 Maryland Ave., SW Washington, DC 20202

Jewish Foundation for Education of Women

A.	Ethnic/gender group restrictions:	Women
B.	Geographical restrictions:	New York City metropolitan area only (radius of 50 miles)
C.	Average amount of dollars awarded:	Varies
D.	Restricted use of money:	None
E.	Application deadline:	October 15th to January 31st
F.	Information/application contact:	Mrs. Florence Wallach Executive Director 120 West 57th St. New York, NY 10019

Grace Legendre Fellowships

A.	Ethnic/gender group restrictions:	Women
B.	Geographical restrictions:	Must be residents of New York State and United States citizen
C.	Average amount of dollars awarded:	Five $1,000 fellowships awarded each year
D.	Restricted use of money:	Tuition
E.	Application deadline:	February 28th

F. Information/application contact:

Business and Professional Women's Clubs of New York State, Inc.
125 Mayro Building
239 Genesee St.
Utica, NY 13501

Herbert Lehman Educational Fund

A. Ethnic/gender group restrictions: Black Americans

B. Geographical restrictions: Formerly segregated schools in the southern United States

C. Average amount of dollars awarded: $800 to $1,000

D. Restricted use of money: None

E. Application deadline: April 15th

F. Information/application contact:

Herbert Lehman Educational Fund
10 Columbus Circle, Suite 2030
New York, NY 10019

Mexican American Business and Professional Scholarship Association

A. Ethnic/gender group restriction: Mexican American students — low income, but not exclusively

B. Geographical restrictions: Los Angeles County

C. Average amount of dollars awarded: $100 to $1,000

D. Restricted use of money: None

E. Application deadline:
May 1st for fall semester
November 1st for spring semester

F. Information/application contact:

Roberto E. Zuniga
P.O. Box 22292
Los Angeles, CA 90022

G. Additional information: Must be full-time undergraduate student. Student should include self-addressed stamped envelope with request.

Mexican American Legal Defense & Educational Fund Law School Scholarship Program

A.	Ethnic/gender group restrictions:	Hispanics
B.	Geographical restrictions:	None
C.	Average amount of dollars awarded:	$1,000 fixed amount
D.	Restricted use of money:	None
E.	Application deadline:	July 31st
F.	Information/application contact:	R. Margarita Recinos Coordinator MALDEF 28 Geary St., 3rd floor San Francisco, CA 94108
G.	Additional information:	MALDEF Law School Scholarship Program awards $1000 scholarships to full-time Hispanic law students (1st, 2nd and 3rd year students). A minimum of 20 loans per academic year based on various criteria— LSDAS; two letters of recommendation; letter of acceptance from a law school; financial need statement (information from law school indicating budget, financial aid provided and unmet need); financial documentation indicating indebtedness; and an essay.

National Hispanic Scholarship Fund

A.	Ethnic/gender group restrictions:	Hispanic American, Mexican American, Puerto Rican, Cuban, Caribbean (Hispanic), Central and South American
B.	Geographical restrictions:	None
C.	Average amount of dollars awarded:	$700
D.	Restricted use of money:	None
E.	Application deadline:	October 15th
F.	Information/application contact:	Selection Committee National Hispanic Scholarship Fund P.O. Box 748 San Francisco, CA 94101

Oklahoma State Regents Scholarship

A.	Ethnic/gender group restrictions:	All minorities
B.	Geographical restrictions:	State residents only
C.	Average amount of dollars awarded:	$4,000 plus full tuition and books per year
D.	Restricted use of money:	None
E.	Application deadline:	June 1st
F.	Information/application contact:	Financial Aid Oklahoma University College of Law 300 Timberdell Rd. Norman, OK 73019
G.	Additional information:	In recent years Oklahoma University College of Law has been granted two of these scholarships.

Phi Alpha Delta

A.	Ethnic/gender group restrictions:	All minorities
B.	Geographical restrictions:	Areas where there are Phi Alpha Delta chapters
C.	Average amount of dollars awarded:	$500 per student, 10 students per school year
D.	Restricted use of money:	None
E.	Application deadline:	December 1st
F.	Information/application contact:	Phi Alpha Delta P.O. Box 3217 Granada Hills, CA 91344
G.	Additional information:	Dollars are given to a worthy student who has exhausted all other funding and will only be able to complete schooling with this money. Must be able to show that she/he will be able to finish school.

Puerto Rican Legal Defense and Educational Fund, Inc.

A. Ethnic/gender group restrictions:	Puerto Rican and other Hispanics
B. Geographical restrictions:	None
C. Average amount of dollars awarded:	$1,000
D. Restricted use of money:	Tuition and other school expenses
E. Application deadline:	Varies each year . . . depends on amount of funds raised.
F. Information/application contact:	Education Division Puerto Rican Legal Defense and Education Fund, Inc. 95 Madison Ave., Rm. 1304 New York, NY 10016

Leo S. Rowe Pan American Fund

A. Ethnic/gender group restrictions:	Citizens of Latin American and Caribbean member states of OAS who are already pursuing studies in the United States.
B. Geographical restrictions:	None
C. Average amount of dollars awarded:	$1,500 per year, interest-free loan
D. Restricted use of money:	Expenses related to the applicant's studies: tuition/fees; books and study materials; room and board; transportation, etc.
E. Application deadline:	Contact the Leo S. Rowe Pan American Fund.
F. Information/application contact:	Secretariat of the Leo S. Rowe Pan American Fund Secretariat for Development Cooperation Organization of American States Washington, DC 20006
G. Additional information:	Must have student visa in the United States

Sachs Foundation

A. Ethnic/gender group restrictions: Black

B. Geographical restrictions: Black residents of Colorado

C. Average amount of dollars awarded: $1,500 to 2,000 annually, for four years

D. Restricted use of money: None

E. Application deadline: March 15th

F. Information/application contact:

Sachs Foundation
418 First National Bank Bldg.
Colorado Springs, CO 80903

Special Scholarship Program in Law for American Indians

A. Ethnic/gender group restrictions: Applicants must certify at least one-quarter blood quantum of a federally recognized tribe.

B. Geographical restrictions: Applicants must be admitted to an accredited law school in the United States.

C. Average amount of dollars awarded: Based on need, year in school, number of dependents.

D. Restricted use of money: Funding is provided to defray cost of living expenses, and is disbursed in 10 equal payments.

E. Application deadline: Files must be complete by May 15th. Financial aid request forms are mailed to those with completed files on June 15th.

F. Information/application contact:

Director
Special Scholarship Program in Law for American Indians
American Indian Law Center
P.O. Box 4456 - Station A
Albuquerque, NM 87196

G. Additional information: Funding for the program is provided by a contract with the Bureau of Indian Affairs.

The Earl Warren Legal Training Program

A. Ethnic/gender group restrictions: Black Americans

B. Geographical restrictions: Emphasis placed on awarding students who wish to enroll in southern law schools. However, there are some restricted funds available for students attending law school in other sections of the United States.

C. Average amount of dollars awarded: $1,000

D. Restricted use of money: None

E. Application deadline: March 15th. Requests for applications must be in writing.

F. Information/application contact:

The Earl Warren Legal Training Program
10 Columbia Circle, Suite 2030
New York, NY 10019

Youth Opportunity Foundation

A. Ethnic/gender group restrictions: Hispanic origin (at least one parent must be Hispanic).

B. Geographical restrictions: Resident of California

C. Average amount of dollars awarded: $500 (one-time grants)

D. Restricted use of money: Education-related expenses.

E. Application deadline: January 1st through March 31st.

F. Information/application contact:

Youth Opportunity Foundation
Felix Castro, Executive Director
8820 S. Sepulveda Blvd., Suite 208
Los Angeles, CA 90045

II. ASSOCIATIONS: General Fellowships, Grants and Loan Programs

Alcoa Foundation Scholarship

A. Ethnic/gender group restrictions: None

B. Geographical restrictions: Makes awards to certain colleges and universities which, in turn, award money to individual students. For list of schools receiving money, send for the 1980 annual report. Address below.

C. Average amount of dollars awarded: Up to $1,000

D. Restricted use of money: None

E. Application deadline: Check with school of your choice receiving funds from Alcoa.

F. Information/application contact:
Alcoa Foundation
1501 Alcoa Building
Pittsburgh, PA 15219

G. Additional information: Alcoa Foundation does give individual scholarships to sons and daughters of Alcoa employees.

Alexander-Bee Educational Loan Trust

A. Ethnic/gender group restrictions: None

B. Geographical restrictions: Long-time Santa Barbara County students

C. Average amount of dollars awarded: $500 to $1,000

D. Restricted use of money: None

E. Application deadline: June 1st

F. Information/application contact:
Bonita Egan, Trust Officer
Crocker National Bank
1001 State Street
Santa Barbara, CA 93101

Allegheny County Bar Association

A. Ethnic/gender group restrictions: None

B. Geographical restrictions: Western Pennsylvania residents; however, you can attend any accredited law school.

C. Average amount of dollars awarded: Maximum of $1,000 per school year

D. Restricted use of money: None

E. Application deadline: July 15th for fall admittees, and December 15th for second semester admittees.

F. Information/application contact:

James I. Smith III,
Executive Director
The Allegheny County Bar Association
Louis Little Attorney's Memorial Fund
920 City-County Building
Pittsburgh, PA 15219

Almanor Scholarship Fund, Chester, California

A. Ethnic/gender group restrictions: None

B. Geographical restrictions: Must be a graduate of Chester High School, Chester, California.

C. Average amount of dollars awarded: $900 per school year

D. Restricted use of money: None

E. Application deadline: September 1st

F. Information/application contact:

Almanor Scholarship Fund
P.O. Box 796
Chester, CA 96020

American Association of Law Libraries

A. Ethnic/gender group restrictions: None

B. Geographical restrictions: None

C. Average amount of dollars awarded: $1,500

D. Restricted use of money: None

E. Application deadline: April 1st

F. Information/application contact:

Scholarship
American Association of Law Libraries
53 West Jackson Blvd.
Chicago, IL 60604

Boys Clubs of San Diego County-Administrators for Spence Reese Foundation

A. Ethnic/gender group restrictions: None

B. Geographical restrictions: None

C. Average amount of dollars awarded: $8,000 for four college years

D. Restricted use of money: None

E. Application deadline: May 1st

F. Information/application contact:
Joseph C. Jacobs, Chairman
Spence Reese Scholarship
2930 Marcy Ave.
San Diego, CA 92113

G. Additional information: Applicants must major in law, medicine, engineering or political science. High scholarship is a prime requisite.

Ty Cobb Scholarship Program

A. Ethnic/gender group restrictions: None

B. Geographical restrictions: Must be a resident of Georgia

C. Average amount of dollars awarded: $1,200

D. Restricted use of money: None

E. Application deadline: May 1st

F. Information/application contact:
Ty Cobb Scholarship Program
P.O. Box 725
Forest Park, GA 30051

Dr. George Grotefend Scholarship Fund

A. Ethnic/gender group restrictions: None

B. Geographical restrictions: Recipients must have completed their whole high school experience in Shasta County. No restriction to choice of college.

C. Average amount of dollars awarded: $400 annually

D. Restricted use of money: None

E. Application deadline: May 1st

F. Information/application contact:
Mr. Dean Dennett, Secretary
Grotefend Scholarship Board
Shasta County Superintendent of Schools Office
1644 Magnolia Ave.
Redding, CA 96001

Graduate Fellowship Section

A. Ethnic/gender group restrictions: None

B. Geographical restrictions: For institutions located in the state of California and accredited by WASC or the California Bar.

C. Average amount of dollars awarded: $3,200

D. Restricted use of money: Tuition only

E. Application deadline: February 10th

F. Information/application contact:

Graduate Fellowship Section
California Student Aid Commission
1410 Fifth Street
Sacramento, CA 95814

D. D. Hachar Charitable Trust

A. Ethnic/gender group restrictions: None

B. Geographical restrictions: Residents of Texas-any college or university. Non-Texas residents-Texas College or University.

C. Average amount of dollars awarded: $800 to $1,200

D. Restricted use of money: Tuition, room & board, books and supplies only

E. Application deadline: April and October of each year

F. Information/application contact:

Mrs. Laura Ramirez
The Laredo National Bank
Trust Department
P.O. Drawer 59
Laredo, TX 78040

G. Additional information: All must be full-time students. Families of Laredo National Bank Trust Department personnel disqualified. The Trust grants aid in the form of loans to postgraduate students (*i.e.*, students in law school).

Edward Arthur Mellinger Educational Fund, Inc.

A. Ethnic/gender group restrictions: None

B. Geographical restrictions: First consideration is given to students who reside in Illinois and Iowa. Second

		consideration is given to applicants residing in the contiguous states, including Indiana, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, South Dakota and Wisconsin. Third consideration will be given to students who attend institutions in the aforementioned states. Those not falling in one of the mentioned categories will not normally receive consideration.
C.	Average amount of dollars awarded:	Varies
D.	Restricted use of money:	None
E.	Application deadline:	June 1st
F.	Information/application contact:	Edward Arthur Mellinger Educational Fund, Inc. 1025 E. Broadway Manmouth, Ill. 61462
G.	Additional information:	Loans only to graduate students.

The John Motley Morehead Foundation

A.	Ethnic/gender group restrictions:	None
B.	Geographical restrictions:	None
C.	Average amount of dollars awarded:	$4,000 per year and full tuition and fees
D.	Restricted use of money:	None
E.	Application deadline:	January 15th of the year a student wishes to compete for a fellowship.
F.	Information/application contact:	The Dean University of North Carolina School of Law Chapel Hill, NC 27514
G.	Additional information:	Qualifications: 1. Scholastic ability and attainments 2. Motivation in and promise of distinction in field of law.

National Wildlife Federation

A.	Ethnic/gender group restrictions:	None
B.	Geographical restrictions:	Citizen of United States, Canada or Mexico

C. Average amount of dollars awarded: $1,000 to $4,000

D. Restricted use of money: Discretionary, but intended to support research

E. Application deadline: December 31st

F. Information/application contact:
Executive Vice President
National Wildlife Federation
1412 Sixteenth St., NW
Washington, DC 20036

Hattie M. Strong Foundation, Inc.

A. Ethnic/gender group restrictions: None

B. Geographical restrictions: None

C. Average amount of dollars awarded: $1,500 to $2,500 annually. This is an interest-free loan and repayment terms are based on monthly income after graduation.

D. Restricted use of money: None

F. Information/application contact:
Hattie M. Strong Foundation, Inc.
Cafrity Bldg., Suite 409
1625 Eye St., NW
Washington, DC 20006

III. FINANCIAL AID FROM UNIVERSITIES: Minorities

Emory University

A. Ethnic/gender group restrictions: All minorities

B. Geographical restrictions: None

C. Average amount of dollars awarded: $3,600, given annually

D. Restricted use of money: General scholarships—tuition waivers only; Woodruff Fellowships open to all students—tuition, books and stipend.

E. Application deadline: February 1st

F. Information/application contact:

Ms. Jane Di Folco
Director of Admissions
Emory University School of Law
Gambrell Hall
Atlanta, GA 30322

G. Additional information: They actively seek minority applicants and encourage applications.

Oklahoma University: Graduate and Professional Opportunities Program

A. Ethnic/gender group restrictions: All minorities

B. Geographical restrictions: None

C. Average amount of dollars awarded: $4,500 plus full tuition and books per year

D. Restricted use of money: None

E. Application deadline: June 1st

F. Information/application contact:

Financial Aids
Oklahoma University College of Law
300 Timberdell Road
Norman, OK 73019

G. Additional information: In recent years Oklahoma University has granted two of these scholarships.

Seton Hall Law School

A. Ethnic/gender group restrictions: All minorities

B. Geographical restrictions: None

C. Average amount of dollars awarded: $2,000 per year

D. Restricted use of money: Tuition

E. Application deadline: May 15th (priority date)

F. Information/application contact:

Aida Castillo Financial Aid Coordinator
Seton Hall Law School
1111 Raymond Blvd.
Newark, NJ 07102

G. Additional information: These monies come out of the Centennial (general) Funds. Twenty-five percent of the fund is earmarked for minorities.

University of Maryland

A.	Ethnic/gender group restrictions:	Minorities
B.	Geographical restrictions:	Preference given to residents of Maryland.
C.	Average amount of dollars awarded:	Varies
D.	Restricted use of money:	None
E.	Application deadline:	Financial aid priority: February 15th
F.	Information/application contact:	James F. Forsyth Director of Admissions University of Maryland Law School 500 West Baltimore St. Baltimore, MD 21201

University of Notre Dame

A.	Ethnic/gender group restrictions:	"Disadvantaged" students
B.	Geographical restrictions:	None
C.	Average amount of dollars awarded:	Varies
D.	Restricted use of money:	Tuition
E.	Application deadline:	March 1st
F.	Information/application contact:	W. McLean, Assistant Dean Norte Dame Law School Notre Dame, IN 46556

University of Santa Clara

A.	Ethnic/gender group restrictions:	All minority students
B.	Geographical restrictions:	None
C.	Average amount of dollars awarded:	One-quarter, one-half or full tuition
D.	Restricted use of money:	Tuition only
E.	Application deadline:	May 1st, scholarships considered after that date.

F.	Information/application contact:	Office of the Dean University of Santa Clara School of Law Santa Clara, CA 95053

University of Toledo College of Law

A.	Ethnic/gender group restrictions:	All minorities
B.	Geographical restrictions:	None
C.	Average amount of dollars awarded:	LEOG: in state 2,931/year** OLOF: $1,200/year* Out-of-State: $3,333/year
D.	Restricted use of money:	OLOF: In accordance with grant.* LEOG: Tuition and stipend intended for books (out-of-state student) or books and living expenses (in-state student).**
E.	Application deadline:	Early applicants have best chance.
F.	Information/application contact:	Office of Admissions University of Toledo College of Law Toledo, OH 43606
G.	Additional information:	Portions of the total financial aid available to students at the University of Toledo College of Law are effectively restricted to minority students: 1. Periodically the law school receives funds from the Ohio Law Opportunity Fund (OLOF). These funds are administered by the law school and the university in accordance with the terms of the grant.* 2. The university has established a Law Education Opportunity Grant (LEOG) which is available to members of groups which are under-represented among practicing lawyers.**

University of Wisconsin at Madison

A.	Ethnic/gender group restrictions:	Black Americans, American Indians, Chicanos and Puerto Ricans. Others with seriously disadvantaged background may qualify.
B.	Geographical restrictions:	None
C.	Average amount of dollars awarded:	First year law students grant @ $4,000; 2nd to 3rd year law students grant @ $3,700.
D.	Restricted use of money:	Tuition and some partial basic living expenses
E.	Application deadline:	February 15th
F.	Information/application contact:	Nancy T. Bernstine Assistant Dean University Wisconsin Madison, WI 53706 Attn: Legal Education Opportunities Program

Vanderbilt University Graduate and Professional Opportunity Program

A.	Ethnic/gender group restrictions:	Minority students
B.	Geographical restrictions:	None
C.	Average amount of dollars awarded:	$9,000 annually; full tuition and $375/month stipend for expenses
D.	Restricted use of money:	1. Tuition 2. Remainder can be used for school-related expences.
E.	Application deadline:	January 15th
F.	Information/application contact:	Anne M. Brandt Director of Admissions Vanderbilt University School of Law Nashville, TN 37240

Western State University

A. Ethnic/gender group restrictions: All minority students

B. Geographical restrictions: None

C. Average amount of dollars awarded: Approx. $600 per student to a total of $20,000 per semester.

D. Restricted use of money: Credit on account for tuition and fees only.

E. Application deadline: Fall semester-June 1st; spring semester-Nov. 21st

F. Information/application contact:
Jennifer Keller, Director of Student Services/Registrar
Western State Univ. of San Diego
1333 Front Street
San Diego, CA 92101

G. Additional information: Renewable if student maintains good academic standing and continues to demonstrate financial need.

IV. FINANCIAL AID FROM UNIVERSITIES: General

Antioch School of Law

A. Ethnic/gender group restrictions: None

B. Geographical restrictions: None

C. Average amount of dollars awarded: Varies

D. Restricted use of money: None

E. Application deadline: March 1st

F. Information/application contact:
Ms. Vivian Canty
Director of Admissions
Antioch School of Law
2633 16th St., NW
Washington, DC 20009

G. Additional information: Applicants should anticipate that their financial aid package will leave up to $2000 of unmet needs, assuming eligibility for aid.

Brooklyn Law School

A.	Ethnic/gender group restrictions:	None
B.	Geographical restrictions:	None
C.	Average amount of dollars awarded:	$1,483
D.	Restricted use of money:	Generally tuition only, but a *full* scholarship will include fees and books.
E.	Application deadline:	April 1st
F.	Information/application contact:	Office of Admissions Brooklyn Law School 250 Joralemon Street Brooklyn, NY 11201
G.	Additional information:	1. School awards a Martin Luther King full scholarship to a qualified black applicant. 2. The school seeks to further its affirmative action policy. 3. Applicants should file a *complete* GAPSFAS application.

Case Western Reserve University

A.	Ethnic/gender group restrictions:	None
B.	Geographical restrictions:	None
C.	Average amount of dollars awarded:	Grants: $1,350; loans: $4,700
D.	Restricted use of money:	Grants to tuition. Loans to other expenses and tuition. Work study to other expenses.
E.	Application deadline:	April 1st
F.	Information/application contact:	Oliver Schroeder, Director Financial Aid Gund Hall, CWRU Cleveland, OH 44106

Stanford Law School

A.	Ethnic/gender group restrictions:	None
B.	Geographical restrictions:	None

C.	Average amount of dollars awarded:	Based on university budgets
D.	Restricted use of money:	Varies
E.	Application deadline:	See university
F.	Information/application contact:	Applicant should file with GAPSFAS and arrange for copy to be sent to Office of Admissions, Stanford Law School, Stanford, CA 94305.

Temple University School of Law

A.	Ethnic/gender group restrictions:	None
B.	Geographical restrictions:	None
C.	Average amount of dollars awarded:	$1,336
D.	Restricted use of money:	None
E.	Application deadline:	Priority date March 1st; after May 1st only awarded if any funds remain.
F.	Information/application contact:	Sandra W. Weckesser, Assistant Dean 1719 N. Broad St. Rm. 513, Klein Building Philadelphia, PA 19122

Thurgood Marshall School of Law

A.	Ethnic/gender group restrictions:	None
B.	Geographical restrictions:	None
C.	Average amount of dollars awarded:	$1,000
D.	Restricted use of money:	1. Tuition 2. Books and supplies 3. More limited for living expenses.
E.	Application deadline:	March 1st
F.	Information/application contact:	Dannye Holley, Associate Dean Thurgood Marshall School of Law Office of Admissions 3100 Cleburne Houston, TX 77004

University of Cincinnati

A.	Ethnic/gender group restrictions:	None
B.	Geographical restrictions:	None
C.	Average amount of dollars awarded:	Full or partial tuition $500 to $4,365 (tuition fee for non-residents). Stipends: $1,500.
D.	Restricted use of money:	Scholarships: tuition. Stipends: school-related expenses.
E.	Application deadline:	March 1st
F.	Information/application contact:	Shirley Richardson Admissions Officer College of Law University of Cincinnati Cincinnati, OH 45221

University of Colorado at Boulder

A.	Ethnic/gender group restrictions:	None
B.	Geographical restrictions:	None
C.	Average amount of dollars awarded:	Varies
D.	Restricted use of money:	1. Tuition and fees 2. Balance to student to be used as she/he sees fit.
E.	Application deadline:	March 1
F.	Information/application contact:	Ruth Casarez, Assistant Dean University of Colorado School of Law Campus Box 401 Boulder, CO 80309
G.	Additional information:	Need based grants, loans and scholarships—award of this aid is based strictly on a student's need. A student must fill out an ACT family financial statement no later than March 1st in order to be eligible for this type of assistance. The amount of aid received depends upon the total need demonstrated.

University of Illinois at Urbana

A. Ethnic/gender group restrictions: None

B. Geographical restrictions: None

C. Average amount of dollars awarded: Varies

D. Restricted use of money: None

E. Application deadline: None if in need; normally by May of entering year.

F. Information/application contact:

Assistant Dean J. Riley
209 College of Law
504 E. Penn
University of Illinois
Champaign, IL 61820

G. Additional information: Minority students have received free tuition and fee waiver since 1969. This waiver will continue as long as sufficient funds are available. Students must submit a financial aid request through the Office of Student Financial Aid.

University of Miami School of Law

A. Ethnic/gender group restrictions: None

B. Geographical restrictions: None

C. Average amount of dollars awarded: Full scholarships generally

D. Restricted use of money: Tuition

E. Application deadline: March 1st

F. Information/application contact:

Admissions Office
University of Miami
School of Law
P.O. Box 248087
Coral Gables, FL 33124

G. Additional information: United States citizens only

University of San Diego

A. Ethnic/gender group restrictions: None

B. Geographical restrictions: None

C.	Average amount of dollars awarded:	One-half to full tuition
D.	Restricted use of money:	Tuition and books only on scholarships
E.	Application deadline:	March 1st
F.	Information/application contact:	Admissions Office University of San Diego School of Law Alcala Park San Diego, CA 92110

University of Texas at Arlington

A.	Ethnic/gender group restrictions:	None
B.	Geographical restrictions:	To UTA Law Society members.
C.	Average amount of dollars awarded:	Unknown
D.	Restricted use of money:	Tuition only
E.	Application deadline:	June 1st
F.	Information/application contact:	Law Society Financial Aid Dept. P.O. Box 19449 University of Texas at Arlington Arlington, TX 76109

Wayne State University

A.	Ethnic/gender group restrictions:	None
B.	Geographical restrictions:	Restricted to currently enrolled students.
C.	Average amount of dollars awarded:	Varies based on need and year in school.
D.	Restricted use of money:	None
E.	Application deadline:	April 1st
F.	Information/application contact:	Law School Financial Aid Office Dr. Barbara Jones Wayne State University Law School 468 W. Ferry Detroit, MI 48202

Conclusion

The program staff made every effort to compile as comprehensive a financial aid list as possible. However, some associations did not respond to our requests for information about their scholarship or fellowship programs, and it is possible that these are financial sources for minority law students of which we are unaware. Therefore, we request that associations and universities, that offer scholarships or fellowships for the study of law provide MALDEF's Higher Education Access Program with information about their financial aid if that information is not presented above or if it is somehow incorrect or incomplete. We sincerely hope that this chapter will prove useful to minority students seeking a legal education, as well as to university administrators and counselors who can make this information available to prospective law students.

APPENDIX

QUESTIONNAIRE

PROGRAM FOR ACCESS TO THE LEGAL PROFESSION

I. Admissions Committee

1. How many admissions committees do you currently have?_____

2. How many members of your current admissions committee(s) belong to each of these categories?

		Committee 1	Committee 2	Other
a.	Law school faculty			
b.	Law school administration			
c.	Law students			
d.	Other (please specify affiliation: _________)			
e.	Total			

3. If there are different admissions committees, please describe the functions of each. Does one serve in an advisory capacity to the other? Please explain who has the final decision-making authority.

4. Who selects the admissions committee(s)?

		Committee 1	Committee 2	Other
a.	The Dean			
b.	Faculty committee(s)			
c.	Other (please specify):			

5. How many votes by admissions committee members are required for an applicant to be offered acceptance? Check one:

Unanimous vote ________
Majority vote ________
Other (please specify): ________

6. Does each member of the admissions committee(s) have an equal vote? Check one:

Yes _________ No _________ If no, please explain:

7. Please explain the procedure for resolving tie-votes and/or lack of unanimity or majority vote in admissions decisions:

II. Applicant Review Process

8. Do you have a specific predictive index, as calculated by the LSAC, to evaluate law school applicants? Check one:

Yes ________ No ________
If yes, please state the formula, including the specific GPA/LSAT percentage weight allocation:

9. When is a candidate's GPA/LSAT index evaluated?

During the initial review of the file? ________

Other (please specify when):

10. Do you automatically reject applicants with LSAT scores below a specified minimum? Check one:

No absolute minimum score is used ________

Yes, and the minimum score is the same for all ________
(please specify score): ________________

Yes, and the minimum score for different groups of applicants is (please list minimum scores for each group):

		Minimum Score
a.	Regular applicants	____________
b.	Special applicants	____________
c.	Other (please specify)	____________

11. Do you have any "automatic" or "administrative" admissions based on applicants' GPA/LSAT index? Check one:

Yes __________ No __________
If yes, please define what for your school is an "automatic" or "administrative" admit:

If yes, approximately what percentage of your entering class is admitted automatically?

12. Do you have any discretionary admissions policy that evaluates more than GPA/LSAT index for "special" or diversity applicants? Check one:

Yes __________ No __________
If yes, what percentage of your entering class is admitted in this way?

13. Please check any of the following characteristics that enter into your admissions decisions:

_____ Race
_____ Ethnicity
_____ Rurality
_____ Sex
_____ Handicap
_____ Age
_____ Religion
_____ Bilingualism
_____ Geographical location
_____ Socioeconomic status
_____ Parental education
_____ Graduate study
_____ Letters of recommendation

_____ Parents or relatives alumni
_____ Parents or relatives donors
_____ Demonstrated community service
_____ Demonstrated leadership
_____ Segregated housing (de jure or de facto)
_____ Segregated schooling (de jure or de facto)
_____ Employment during college
_____ Employment after college
_____ Other (please specify): ______________________
____
_____ None of the above

14. Are all of your applicants evaluated on the criteria listed in question #13 above? Check one:

Yes __________ No __________
If no, what proportion is not?

15. What percentage of your applicants is interviewed?

a. Regular applicants _______

b. "Special" applicants _______

c. None _______
(If none, please explain):

III. Recruitment and Supportive Programs

16. What percentage, if any, of your total annual recruitment budget is earmarked for "special" recruitment?

17. Please check any item that accurately describes your recruitment program:

_______ Separate recruitment programs for regular and "special" applicants

_______ Unified recruitment program for all applicants

_______ Minority students significantly influencing your recruitment policy

_______ Minority students actively involved in recruitment

18. Do you currently offer academic supportive programs for students (e.g. tutorial, etc.)?

_______ Yes, for all students

_______ Yes, but primarily for "special" students

_______ No (If no, please skip to question #23)

19. Is student participation in the supportive programs voluntary? Check one:

Yes __________ No __________

20. Who (name and title) directs your supportive programs?

Name ____

Title ____

21. Please check any statements that apply to your school's supportive programs (e.g. tutorial, etc.):

Students tutor ______
Faculty tutors ______
Other ______
(please specify):

Study skills taught ______
Test taking skills taught ______
Writing skills taught ______

22. Please explain briefly your supportive programs, including, but not limited to, substantive content, materials provided, hours per week, instructors, number of students per group, etc.:

23. Do you have funds reserved for "special" students requiring financial assistance? Check one:

Yes __________ No __________
If yes, how much?

____

IV. Admissions Data

24. Please complete the following table of student enrollment (including first, second, and third year students) by year and racial/ethnic group:

	Black	Hispanic	Asian American	Other Minority (Please Specify)	Total Minority	Grand Total (Non-minority and Minority)
1970-71						
1971-72						
1975-76						
1976-77						
1980-81						
1981-82						

25. Please complete the following table on third year racial/ethnic minority students:

	1970-71	1971-72	1975-76	1976-77	1979-80	1980-81
Number of minority students who graduated						
Number of minority graduates who passed State Bar on first attempt						

Number of minority graduates who passed State Bar on subsequent attempts	_______	_______	_______	_______	_______	_______
Number of students overall who passed State Bar on first attempt	_______	_______	_______	_______	_______	_______

26. Please state for the following years the ratio of candidates admitted to those seeking admission (i.e. 100 out of 500):

"Special" Admittees

1981-82 _______ out of _______

1980-81 _______ out of _______

1976-77 _______ out of _______

1975-76 _______ out of _______

1971-72 _______ out of _______

1970-71 _______ out of _______

Regular Admittees

1981-82 _______ out of _______

1980-81 _______ out of _______

1976-77 _______ out of _______

1975-76 _______ out of _______

1971-72 _______ out of _______

1970-71 _______ out of _______

27. Please state for the following years the number of students enrolled for the first year:

	Regular Enrollees	Special Enrollees
1981-82	__________	__________
1980-81	__________	__________
1976-77	__________	__________
1975-76	__________	__________
1971-72	__________	__________
1970-71	__________	__________

28. What were the mean and, if available, median LSAT scores and the range of LSAT scores at your school for the following entering classes?

	Regular Enrollees	Special Enrollees*
1981-82		
Mean		
Median		
Range (highest/lowest)		
1980-81		
Mean		
Median		
Range (highest/lowest)		
1976-77		
Mean		
Median		
Range (highest/lowest)		
1975-76		
Mean		
Median		
Range (highest/lowest)		
1971-72		
Mean		
Median		
Range (highest/lowest)		
1970-71		
Mean		
Median		
Range (highest/lowest)		

*Excluding racial and/or ethnic minorities admitted under regular criteria.

29. What were the mean and, if available, median undergraduate grade point averages (UGPA) and the range of UGPA at your school for the following entering classes?

	Regular Enrollees	Special Enrollees*
1981-82		
Mean		
Median		
Range (highest/lowest)		
1980-81		
Mean		
Median		
Range (highest/lowest)		
1976-77		
Mean		
Median		
Range (highest/lowest)		
1975-76		
Mean		
Median		
Range (highest/lowest)		
1971-72		
Mean		
Median		
Range (highest/lowest)		
1970-71		
Mean		
Median		
Range (highest/lowest)		

*Excluding racial and/or ethnic minorities admitted under regular criteria.

30. What were the mean and, if available, median first year grade point averages at your school for the following entering classes?

	Regular Enrollees	Special Enrollees*
1980-81		
Mean		
Median		
1979-80		
Mean		
Median		
1976-77		
Mean		
Median		
1975-76		
Mean		
Median		
1971-72		
Mean		
Median		
1970-71		
Mean		
Median		

*Excluding racial and/or ethnic minorities admitted under regular criteria.

V. Policy Considerations

31. Please state the specific institutional objectives that are reflected by your law school's admissions policy:

32. Are these institutional objectives published somewhere? Check one:

Yes __________ No __________
If yes, please state where:

33. Please explain in the space provided any planned revisions in your admissions policy with respect to:

- the weight assigned to GPA or LSAT scores:

- the weight(s) assigned to factors other than GPA and LSAT scores:

- the way "special" applicants are evaluated:

- admissions committees for regular and "special" applicants:

- applicant interviews:

- other (please specify):

34. Please describe your screening and review process, noting any distinction in procedures between regular and "special" applicants:

VI. Bar Passage

35. Is your school affiliated with a minority bar passage program supplementary to commercial bar courses? Check one:

Yes ____________________ No ____________________

If yes, please describe the program briefly:

36. If the answer to question #35 is yes:

a. What is the bar passage rate for those enrolled in your course?

_____out of _____(1980)

_____out of _____(1979)

_____out of _____(1978)

_____out of _____(1977)

_____out of _____(1976)

_____out of _____(1975)

b. What is the percentage of minorities enrolled in your course?

% Blacks enrolled ________

% Hispanics enrolled ________

% Asians enrolled ________

% Other enrolled ________

c. What is the bar passage rate for minorities enrolled in your course?

	1980	1979	1978	1977	1976	1975
% Black passage rate	____	____	____	____	____	____
% Hispanic passage rate	____	____	____	____	____	____
% Asian passage rate	____	____	____	____	____	____
% Other passage rate	____	____	____	____	____	____
% Total passage rate	____	____	____	____	____	____

37. What is the bar passage rate for students enrolled in your school?

	Minorities	Non-minorities
1980	_____	_____
1979	_____	_____
1978	_____	_____
1977	_____	_____
1976	_____	_____
1975	_____	_____

38. What is the bar passage rate for all candidates in your state for the following years?

1980 ____________

1979 ____________

1978 ____________

1977 ____________

1976 ____________

1975 ____________

39. Is there any other information that you think would be relevant to our study?

Optional

40. Have there been any reverse discrimination suits filed against your law school -- either before or after the U.S. Supreme Court decision in Bakke?

Yes ________ No ________

If yes, please state the name, nature, and status of the suit: